RECORD AND BRIEFS

FILED
AUG - 7 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 16-402

IN THE

Supreme Court of the United States

TIMOTHY IVORY CARPENTER,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

Harold Gurewitz
Counsel of Record
GUREWITZ & RABEN, PLC
333 W. Fort Street, Suite 1400
Detroit, MI 48226
(313) 628-4733
hgurewitz@grplc.com
Counsel for Petitioner

Jeffrey B. Wall
Counsel of Record
Acting Solicitor General
UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
(202) 514-2217
SupremeCtBriefs@USDOJ.gov
Counsel for Respondent

PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 26, 2016

PETITION FOR WRIT OF CERTIORARI GRANTED JUNE 5, 2017

TABLE OF CONTENTS

United States District Court for the Eastern District of Michigan (Detroit), No. 2:12-cr-20218-SFC-MKM, Relevant Docket Entries 1

United States Court of Appeals for the Sixth Circuit, No. 14-1572, Relevant Docket Entries 26

United States District Court, Eastern District of Michigan, Southern Division, Case No. 12-20218

Transcript of Jury Trial - Volume Two (Dec. 6, 2013) 33

Transcript of Jury Trial - Volume Seven (Dec. 13, 2013) 35

Transcript of Jury Trial – Volume Eight (Dec. 16, 2013) 130

Defendant's Trial Exhibit No. 2, Excerpt of Records for Target Number: 313.424.957 135

Defendant's Trial Exhibit No. 3, Excerpt of Records for Target Number: 313.424.957 136

RELEVANT DOCKET ENTRIES

United States District Court for the Eastern District of Michigan (Detroit)
No. 2:12-cr-20218-SFC-MKM

United States v. Green et al.

DATE	DOCKET NUMBER	PROCEEDINGS
12/11/2012	55	FIRST SUPERSEDING INDICTMENT as to Juston Labaron Young (3) count(s) 5s, 6s, 7s, 8s, Timothy Ivory Carpenter (4) count(s) 1, 2, 3, 4. [TIME STAMPED ON 8/29/12] (KKra) (Entered: 12/12/2012)
12/14/2012		Minute Entry for proceedings held before Magistrate Judge R. Steven Whalen: Arraignment as to Timothy Ivory Carpenter (4) Count 1,2,3,4 held on 12/14/2012. Disposition: Plea of Not Guilty Entered. (Tape #: RSW 12/14/2012) (Defendant Attorney: Harold Gurewitz) (AUSA: Kenneth Chadwell) (JCur) (Entered: 12/14/2012)
02/19/2013	66	SECOND SUPERSEDING INDICTMENT as to Timothy

DATE	DOCKET NUMBER	PROCEEDINGS
		Ivory Carpenter (4) count(s) 1s, 2s, 3s, 4s, 5s, 6s, Adriane Foster (5) count(s) 5, 6, 7, 8, 9, 10. (DPer) (Entered: 02/21/2013)
04/02/2013	78	THIRD SUPERSEDING INDICTMENT as to Timothy Ivory Carpenter (4) count(s) 1ss, 2ss, 3ss, 4ss, 5ss, 6ss, 7ss, 8ss, Adriane Foster (5) count(s) 5s, 6s, 7s, 8s, 9s, 10s, Jesse Gordon Dismukes, Jr. (7) count(s) 9, 10, 11, 12, 13, 14, David Lamont Holland (8) count(s) 9, 10, 11, 12, 13, 14, Lacrystal Elice Hill (9) count(s) 13, 14. (KKra) (Entered: 04/02/2013)
07/10/2013	119	FOURTH SUPERSEDING INDICTMENT as to Timothy Ivory Carpenter (4) count(s) 1sss, 2sss, 3sss, 4sss, 7sss, 8sss, 9sss, 10sss, 11sss, 12sss, 13sss, 14sss, Sedric Charles Bell-Gill (10) count(s) 3, 4, 11, 12, Timothy Michael Sanders (11) count(s) 5, 6, 7, 8, Patrick Heard (12) count(s) 13, 14, 15, 16. (KKra) (Entered: 07/11/2013)
11/21/2013	196	MOTION in Limine *to Suppress Cell Phone Data* by Timothy

DATE	DOCKET NUMBER	PROCEEDINGS
		Michael Sanders. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit A - 2703 Order) (Early, S.) (Entered: 11/21/2013)
11/22/2013	201	EXHIBIT LIST by United States of America as to Timothy Ivory Carpenter, Timothy Michael Sanders (Chadwell, Kenneth) (Entered: 11/22/2013)
11/22/2013	208	EXHIBIT LIST by Timothy Michael Sanders (Early, S.) (Entered: 11/22/2013)
11/22/2013	210	NOTICE of Joinder/Concurrence in 206 Objection filed by Timothy Michael Sanders, 208 Exhibit List filed by Timothy Michael Sanders by Timothy Ivory Carpenter as to Timothy Ivory Carpenter, Timothy Michael Sanders (Gurewitz, Harold) (Entered: 11/22/2013)
11/25/2013	211	MOTION in Limine *to Exclude Lay & Expert Testimony* by Timothy Ivory Carpenter. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A: Cellular Analysis) (Gurewitz, Harold)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 11/25/2013)
11/25/2013	214	NOTICE of Joinder/Concurrence in 196 MOTION in Limine *to Suppress Cell Phone Data* filed by Timothy Michael Sanders, 199 MOTION in Limine *to Exclude Certain Specified Evidence and Combined Brief* filed by Timothy Michael Sanders by Timothy Ivory Carpenter as to Timothy Ivory Carpenter, Timothy Michael Sanders (Gurewitz, Harold) (Entered: 11/25/2013)
11/26/2013	216	NOTICE *of Supplement to Notice of Joinder* by Timothy Ivory Carpenter re 214 Notice of Joinder/Concurrence, (Gurewitz, Harold) (Entered: 11/26/2013)
12/02/2013	221	RESPONSE by United States of America as to Timothy Ivory Carpenter, Timothy Michael Sanders re 211 MOTION in Limine *to Exclude Lay & Expert Testimony*, 199 MOTION in Limine *to Exclude Certain Specified Evidence and Combined Brief*, 196 MOTION in Limine *to Suppress Cell Phone Data*, 203 MOTION in Limine *Pursuant to*

DATE	DOCKET NUMBER	PROCEEDINGS
		FRE 401, 403, and 404(b) (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F) (Chadwell, Kenneth) (Entered: 12/02/2013)
12/03/2013	223	REPLY TO RESPONSE by Timothy Ivory Carpenter as to Timothy Ivory Carpenter, Timothy Michael Sanders re 196 MOTION in Limine *to Suppress Cell Phone Data* (Gurewitz, Harold) (Entered: 12/03/2013)
12/03/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Voir Dire Begun and Concluded and Jury Impaneled on 12/3/2013 as to Timothy Ivory Carpenter (4) on Count 1sss,2sss,3sss,4sss,7sss,8sss,9sss, 10sss,11sss,12sss,13sss,14sss and Timothy Michael Sanders (11) on Count 5,6,7,8 Jury Trial set for 12/5/2013 08:30 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewtiz, Jason Eggert and S. Allen Early) (AUSA: Kenneth

DATE	DOCKET NUMBER	PROCEEDINGS
		Chadwell) (JMcC) (Entered: 12/04/2013)
12/03/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Motion Hearing as to Timothy Ivory Carpenter, Timothy Michael Sanders held on 12/3/2013 re 199 MOTION in Limine *to Exclude Certain Specified Evidence and Combined Brief* filed by Timothy Michael Sanders Disposition: Resolved in Part by Parties. Stipulation to be submitted. (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/04/2013)
12/04/2013	224	NOTICE of Joinder/Concurrence in 223 Reply to Response to Motion filed by Timothy Ivory Carpenter by Timothy Michael Sanders as to Timothy Ivory Carpenter, Timothy Michael Sanders (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit A - Application and Order regarding (313) 578-8507) (Early, S.) (Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
		12/04/2013)
12/04/2013	225	STIPULATION by United States of America as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Chadwell, Kenneth) (Entered: 12/04/2013)
12/05/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Begun and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/5/2013. Jury Trial set for 12/6/2013 08:30 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/05/2013)
12/06/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Held and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/6/2013. Jury Trial set for 12/9/2013 08:30 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/06/2013)
12/06/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Motion Hearing as to Timothy Ivory Carpenter, Timothy Michael Sanders held on 12/6/2013 re 211 MOTION in Limine *to Exclude Lay & Expert Testimony* filed by Timothy Ivory Carpenter, 196 MOTION in Limine *to Suppress Cell Phone Data* filed by Timothy Michael Sanders Disposition: Taken Under Advisement (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/06/2013)
12/06/2013	227	ORDER Denying Without Prejudice 211 Motion in Limine as to Timothy Ivory Carpenter (4); Denying 196 Motion in Limine as to Timothy Michael Sanders (11). Signed by District Judge Sean F. Cox. (JMcC)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 12/06/2013)
12/09/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Held and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/9/2013. Jury Trial set for 12/10/2013 08:30 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/09/2013)
12/10/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Held and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/10/2013. Jury Trial set for 12/11/2013 08:30 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/10/2013)

DATE	DOCKET NUMBER	PROCEEDINGS
12/11/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Held and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/11/2013. Jury Trial set for 12/12/2013 08:30 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz Jason Eggert and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/11/2013)
12/12/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Held and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/12/2013. Jury Trial set for 12/13/2013 08:30 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/13/2013)
12/13/2013		Minute Entry for proceedings held before District Judge Sean

DATE	DOCKET NUMBER	PROCEEDINGS
		F. Cox: Jury Trial Held and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/13/2013. Jury Trial set for 12/16/2013 09:00 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kennth Chadwell) (JMcC) (Entered: 12/13/2013)
12/16/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Held and Continued as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/16/2013. Jury Deliberation also held. Jury Trial set for 12/17/2013 09:00 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz, Jason Eggert and S. Allen Early) (AUSA: Kennth Chadwell) (JMcC) (Entered: 12/17/2013)
12/17/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Deliberations Held

DATE	DOCKET NUMBER	PROCEEDINGS
		as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/17/2013. Jury Deliberations Continued to 12/18/2013 09:00 AM before District Judge Sean F. Cox (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz and S. Allen Early) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 12/18/2013)
12/18/2013		Minute Entry for proceedings held before District Judge Sean F. Cox: Jury Trial Held and Completed as to Timothy Ivory Carpenter, Timothy Michael Sanders on 12/18/2013. Jury Deliberation also held. JURY VERDICT as to Timothy Ivory Carpenter (4) Guilty on Count 1sss,3sss,4sss,7sss,8sss,9sss,10ss s,11sss,12sss,13sss,14sss and Timothy Michael Sanders (11) Guilty on Count 5,7. Timothy Ivory Carpenter (4) Not Guilty on Count 2sss and Timothy Michael Sanders (11) Not Guilty on Count 6,8. (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz and S. Allen Early) (AUSA: Kenneth

DATE	DOCKET NUMBER	PROCEEDINGS
		Chadwell) (JMcC) (Entered: 12/19/2013)
12/18/2013	249	Jury Verdict Form as to Timothy Ivory Carpenter (PMil) (Entered: 12/19/2013)
04/16/2014		Minute Entry for proceedings held before District Judge Sean F. Cox: Sentencing held as to Timothy Ivory Carpenter. (Court Reporter: Marie Metcalf) (Defendant Attorney: Harold Gurewitz) (AUSA: Kenneth Chadwell) (JMcC) (Entered: 04/16/2014)
04/28/2014	301	JUDGMENT as to Timothy Ivory Carpenter. Signed by District Judge Sean F. Cox. (KKra) (Entered: 04/29/2014)
04/29/2014	303	NOTICE OF APPEAL by Timothy Ivory Carpenter. Fee Status: No Fee Paid. (Gurewitz, Harold) (Entered: 04/29/2014)
09/11/2014	325	TRANSCRIPT of Jury Trial - Volume One - held on 12/05/2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie

DATE	DOCKET NUMBER	PROCEEDINGS
		Metcalf) (Number of Pages: 152) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/2/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 12/10/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) [DOCKET TEXT CORRECTED, SEE NOTICE OF CORRECTION FILED 9/12/2014] Modified on 9/12/2014 (JMcC). (Entered: 09/11/2014)
09/11/2014	326	TRANSCRIPT of Jury Trial - Volume Two - held on 12/06/2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court

DATE	DOCKET NUMBER	PROCEEDINGS
		Reporter/Transcriber: Marie Metcalf) (Number of Pages: 162) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/2/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 12/10/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/11/2014)
09/11/2014	327	TRANSCRIPT of Jury Trial - Volume Three - held on 12/09/2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 143)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/2/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 12/10/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/11/2014)
09/11/2014	328	TRANSCRIPT of Jury Trial - Volume Four - held on 12/10/2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 173) (Appeal Purposes) The parties have 21 days to file with the court and Court

DATE	DOCKET NUMBER	PROCEEDINGS
		Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/2/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 12/10/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/11/2014)
09/11/2014	329	TRANSCRIPT of Jury Trial - Volume Five - held on 12/11/2014 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 165) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript

DATE	DOCKET NUMBER	PROCEEDINGS
		may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/2/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 12/10/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/11/2014)
09/11/2014	330	TRANSCRIPT of Jury Trial - Volume Six - held on 12/12/2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 163) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90

DATE	DOCKET NUMBER	PROCEEDINGS
		days. Redaction Request due 10/2/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 12/10/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/11/2014)
09/12/2014	331	NOTICE of Correction re 325 Transcript as to Timothy Ivory Carpenter, Timothy Michael Sanders. (JMcC) (Entered: 09/12/2014)
09/12/2014	332	TRANSCRIPT of Jury Trial - Volume Seven - held on 12/13/2014 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 196) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no

DATE	DOCKET NUMBER	PROCEEDINGS
		request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/3/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 12/11/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/12/2014)
09/17/2014	333	TRANSCRIPT of Jury Trial - Volume Eight - held on 12/16/2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 125) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely

DATE	DOCKET NUMBER	PROCEEDINGS
		electronically available to the public without redaction after 90 days. Redaction Request due 10/8/2014. Redacted Transcript Deadline set for 10/20/2014. Release of Transcript Restriction set for 12/16/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/17/2014)
09/17/2014	334	TRANSCRIPT of Jury Trial - Jury Deliberating (Questions) held on 12/17/2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 9) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90

DATE	DOCKET NUMBER	PROCEEDINGS
		days. Redaction Request due 10/8/2014. Redacted Transcript Deadline set for 10/20/2014. Release of Transcript Restriction set for 12/16/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/17/2014)
09/18/2014	335	TRANSCRIPT of Jury Trial - Jury Questions, Testimony played for the Jury, Jury Verdicts held on 12-18-2013 as to Timothy Ivory Carpenter, Timothy Michael Sanders. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 38) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due

DATE	DOCKET NUMBER	PROCEEDINGS
		10/9/2014. Redacted Transcript Deadline set for 10/20/2014. Release of Transcript Restriction set for 12/17/2014. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/18/2014)
09/18/2014	336	TRANSCRIPT of Sentencing Hearing held on 04/16/2014 as to Timothy Ivory Carpenter. (Court Reporter/Transcriber: Marie Metcalf) (Number of Pages: 21) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/9/2014. Redacted Transcript Deadline set for 10/20/2014. Release of Transcript Restriction set for 12/17/2014. Transcript

DATE	DOCKET NUMBER	PROCEEDINGS
		may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Metcalf, M) (Entered: 09/18/2014)
04/13/2016	389	OPINION and JUDGMENT from U.S. Court of Appeals - Sixth Circuit as to Timothy Ivory Carpenter re 303 Notice of Appeal [Appeal Case Number 14-1572/1805] (Ahmed, N) (Entered: 04/13/2016)
07/08/2016	395	MANDATE from U.S. Court of Appeals - Sixth Circuit as to Timothy Ivory Carpenter re 303 Notice of Appeal filed by Timothy Ivory Carpenter [Appeal Case Number 14-1572/14-1805] (SSch) (Entered: 07/19/2016)
09/30/2016	410	LETTER from the US Supreme Court that a petition for writ of certiorari was filed on 09/26/2016 as to Timothy Ivory Carpenter [Supreme Court Case Number: 16-402] [Court of Appeals Case Number: 14-1572] (Ahmed, N)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 09/30/2016)
06/06/2017	431	LETTER from the US Supreme Court granting the petition for writ of certiorari as to Timothy Ivory Carpenter [Supreme Court Case Number: 16-402] [Court of Appeals Case Number: 14-1572] (Ahmed, N) Modified on 6/12/2017 (DPer). (Entered: 06/12/2017)
07/10/2017	439	LETTER from the US Supreme Court granting the petition for writ of certiorari as to Timothy Ivory Carpenter [Supreme Court Case Number: 16-402] [Court of Appeals Case Number: 14-1572] (Ahmed, N) (Entered: 07/10/2017)

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
NO. 14-1572

United States v. Carpenter

DATE	DOCKET NUMBER	PROCEEDINGS
05/07/2014	1	Criminal Case Docketed. Notice filed by Appellant Timothy Ivory Carpenter. Transcript needed: y. (RB)
03/02/2015	25	APPELLANT BRIEF filed by Mr. Harold Z. Gurewitz for Timothy Ivory Carpenter. Certificate of Service:03/02/2015. Argument Request: requested. (HZG)
03/02/2015	26	APPENDIX filed by Mr. Harold Z. Gurewitz for Timothy Ivory Carpenter. Volume: 1; Pages: App 001 - App 019. Certificate of Service: 03/02/2015. (HZG)
03/09/2015	29	AMICUS BRIEF filed by *Nathan Freed Wessler for American Civil Liberties Union, American Civil Liberties Union of Michigan, Brennan Center for Justice,*

DATE	DOCKET NUMBER	PROCEEDINGS
		Center for Democracy & Technology, Electronic Frontier Foundation, National Association of Criminal Defense Lawyers. Certificate of Service:03/09/2015. [14-1572, 14-1805] (NFW)
03/10/2015	33	APPENDIX filed by Mr. Nathan Freed Wessler for American Civil Liberties Union of Michigan, Brennan Center for Justice, EFF, NACDL, ACLU and Center for Democracy & Technology in 14-1572, 14-1805. Volume: I-XXIX; Pages: 1 - 667. Certificate of Service: 03/10/2015. [14-1572, 14-1805] (NFW)
03/10/2015	34	MOTION filed by Mr. Nathan Freed Wessler for American Civil Liberties Union of Michigan, Brennan Center for Justice, EFF, NACDL, ACLU and Center for Democracy & Technology in 14-1572, 14-1805 to take judicial notice. Certificate of Service: 03/10/2015. [14-1572, 14-1805] (NFW)
03/20/2015	37	RESPONSE in opposition filed regarding a motion to take judicial notice, [34]; previously

DATE	DOCKET NUMBER	PROCEEDINGS
		filed by Mr. Nathan Freed Wessler in 14-1572, 14-1805. Response from Attorney Mr. Kenneth Ray Chadwell, Jr. for Appellee USA in 14-1572, 14-1805 Certificate of Service:03/20/2015. [14-1572, 14-1805] (KRC)
05/06/2015	41	APPELLEE BRIEF filed by Mr. Evan Howard Caminker for USA in 14-1572, 14-1805. Certificate of Service:05/06/2015. Argument Request: requested. [14-1572, 14-1805] (EHC)
05/26/2015	44	REPLY BRIEF filed by Attorney Mr. Harold Z. Gurewitz for Appellant Timothy Ivory Carpenter. Certificate of Service:05/26/2015. (HZG)
08/10/2015	46	ADDITIONAL CITATION filed by Mr. Harold Z. Gurewitz for Timothy Ivory Carpenter and Mr. S. Allen Early for Timothy Michael Sander. Certificate of Service: 08/10/2015. [14-1572, 14-1805]--[Edited 08/11/2015 by RB] (HZG)
08/13/2015	48	Oral argument date set for 9:00

DATE	DOCKET NUMBER	PROCEEDINGS
		a.m. on Wednesday, October 14, 2015. Notice of argument sent to counsel on 08/13/2015. [14-1572, 14-1805] (LAG)
08/18/2015	51	RESPONSE in opposition filed regarding an additional citation, [46]. Response from Attorney Mr. Evan Howard Caminker for Appellee USA in 14-1572, 14-1805. Certificate of Service:08/18/2015. [14-1572, 14-1805] (EHC)
09/09/2015	53	Amicus MOTION filed by Mr. Nathan Freed Wessler for American Civil Liberties Union of Michigan, Brennan Center for Justice, EFF, NACDL, ACLU and Center for Democracy & Technology in 14-1572, 14-1805 requesting leave to appear at oral argument. Certificate of Service: 09/09/2015. [14-1572, 14-1805] (NFW)
09/15/2015	54	ORDER filed the motion filed by Mr. Nathan Freed Wessler for American Civil Liberties Union, American Civil Liberties Union of Michigan, Brennan Center for Justice, EFF, NACDL and Center

DATE	DOCKET NUMBER	PROCEEDINGS
		for Democracy & Technology to participate in oral argument is GRANTED. Oral argument will be extended by five minutes per side. Entered by order of the court. [14-1572, 14-1805] (RB)
10/14/2015	59	CAUSE ARGUED by Mr. Nathan Freed Wessler for Amici Curiae American Civil Liberties Union of Michigan, Brennan Center for Justice, EFF, NACDL, ACLU and Center for Democracy & Technology, Mr. Harold Z. Gurewitz for Appellant Timothy Ivory Carpenter and Mr. Evan Howard Caminker for Appellee USA before Guy, Circuit Judge; Kethledge, Circuit Judge and Stranch, Circuit Judge. (MCP)
11/02/2015	58	ADDITIONAL CITATION filed by Mr. Evan Howard Caminker for USA in 14-1572, 14-1805. Certificate of Service: 11/02/2015. [14-1572, 14-1805] (EHC)
04/11/2016	60	ORDER filed we decline to take notice of Exhibits A, B, D and E. We need not take judicial notice of Exhibits C and F, which are already part of the record under

DATE	DOCKET NUMBER	PROCEEDINGS
		consideration on appeal. Ralph B. Guy, Jr., Circuit Judge; Raymond M. Kethledge, Circuit Judge and Jane Branstetter Stranch, Circuit Judge. [14-1572, 14-1805] (RB)
04/13/2016	61	OPINION and JUDGMENT filed : The judgments in both cases are AFFIRMED. decision for publication. Ralph B. Guy, Jr., Raymond M. Kethledge (AUTHORING), and Jane Branstetter Stranch (CONCURRING), Circuit Judges. [14-1572, 14-1805] (CL)
05/26/2016	64	PETITION for en banc rehearing filed by Mr. Harold Z. Gurewitz for Timothy Ivory Carpenter. Certificate of Service: 05/26/2016. (HZG)
06/29/2016	65	ORDER filed denying petition for en banc rehearing [64] filed by Mr. Harold Z. Gurewitz. Ralph B. Guy , Jr., Raymond M. Kethledge, and Jane Branstetter Stranch, Circuit Judges. (BLH)
07/08/2016	66	MANDATE ISSUED with no costs taxed. [14-1572, 14-1805]

DATE	DOCKET NUMBER	PROCEEDINGS
		(RB)
09/30/2016	67	U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellant Timothy Ivory Carpenter. Supreme Court Case No:16-402, 09/26/2016. (CL)
06/06/2017	68	U.S. Supreme Court letter filed GRANTING the petition for a writ of certiorari [67] filed by Timothy Ivory Carpenter. Supreme Court Case No: 16-402, 06/05/2017. **N.B. ERRATUM - THE PETITION FOR WRIT OF CERTIORARI WAS GRANTED.- -[Edited 07/10/2017 by CL] (CL)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No.
12-20218

TIMOTHY IVORY CARPENTER and
TIMOTHY MICHAEL SANDERS,

Defendants.

JURY TRIAL - VOLUME TWO
BEFORE HON. SEAN F. COX
United States District Judge
257 U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Friday, December 6, 2013)

APPEARANCES:

KENNETH R. CHADWELL, ESQUIRE
Appearing on behalf of the
Government.

HAROLD Z. GUREWITZ, ESQUIRE
JASON EGGERT, ESQUIRE
Appearing on behalf of the
Defendant Timothy Ivory
Carpenter.

S. ALLEN EARLY, ESQUIRE
Appearing on behalf of Defendant
Timothy Michael Sanders.

DATE	DOCKET NUMBER	PROCEEDINGS
		(RB)
09/30/2016	67	U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellant Timothy Ivory Carpenter. Supreme Court Case No:16-402, 09/26/2016. (CL)
06/06/2017	68	U.S. Supreme Court letter filed GRANTING the petition for a writ of certiorari [67] filed by Timothy Ivory Carpenter. Supreme Court Case No: 16-402, 06/05/2017. **N.B. ERRATUM - THE PETITION FOR WRIT OF CERTIORARI WAS GRANTED.- -[Edited 07/10/2017 by CL] (CL)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No.
12-20218

TIMOTHY IVORY CARPENTER and
TIMOTHY MICHAEL SANDERS,

Defendants.

JURY TRIAL - VOLUME TWO
BEFORE HON. SEAN F. COX
United States District Judge
257 U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Friday, December 6, 2013)

APPEARANCES:

KENNETH R. CHADWELL, ESQUIRE
Appearing on behalf of the
Government.

HAROLD Z. GUREWITZ, ESQUIRE
JASON EGGERT, ESQUIRE
Appearing on behalf of the
Defendant Timothy Ivory
Carpenter.

S. ALLEN EARLY, ESQUIRE
Appearing on behalf of Defendant
Timothy Michael Sanders.

* * * * *

[158]

Mr. Gurewitz's motion with respect to *Daubert* and I join in his comments now, Your Honor.

THE COURT: Okay. Anything else, Mr. Chadwell?

MR. CHADWELL: I guess I'm just inclined now to reply to Mr. Gurewitz's reply --

THE COURT: Sure. Go ahead.

MR. CHADWELL: As I understand Mr. Gurewitz's reply brief, he was highlighting -- he seemed to be abandoning his other arguments and he was highlighting that he didn't think the reasonable ground standard had been met.

THE COURT: Right.

MR. CHADWELL: And so I just wanted to say a few words about the 2703(d) reasonable ground standard, if I could. And if you read 2703(d) carefully, there's a lot of qualifiers if you look carefully. First of all, reasonable grounds is less than probable cause. That's kind of a big qualification.

Then reasonable grounds to believe that something is relevant, which is a another gigantic qualification, what might be relevant to something can be really far afield. It's giant umbrella of information. And thirdly, we don't have to show a crime. We merely have to show there's a criminal investigation of a crime, which is a third qualifier. And then, even when we don't meet the statute full

* * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No.
12-20218

TIMOTHY IVORY CARPENTER and
TIMOTHY MICHAEL SANDERS,

Defendants.

JURY TRIAL - VOLUME SEVEN
BEFORE HON. SEAN F. COX
United States District Judge
257 U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Friday, December 13, 2013)

APPEARANCES:

KENNETH R. CHADWELL, ESQUIRE
Appearing on behalf of the
Government.

HAROLD Z. GUREWITZ, ESQUIRE
JASON EGGERT, ESQUIRE
Appearing on behalf of the
Defendant Timothy Ivory
Carpenter.

S. ALLEN EARLY, ESQUIRE
Appearing on behalf of Defendant
Timothy Michael Sanders.

* * * * *

[32]

prevention training in a store after the fact. A loss prevention manager would, to kind of reinforce security measures, what should be done, what shouldn't be done, this type of situation.

Q Where is the loss prevention manager for Warren, Ohio?

A He would be based out of Cleveland right now, I believe.

Q Cleveland?

A Yes.

Q Was that the case back in 2011?

A At the time, I believe it was Pittsburgh.

MR. EARLY: Pittsburgh. Thank you.

THE COURT: Redirect?

MR. CHADWELL: No questions, Your Honor.

THE COURT: Thank you very much, Mr. Decker.

THE WITNESS: Thank you.

MR. CHADWELL: Your Honor, I call Chris Hess at this time.

THE COURT: Would you give your full name to our court reporter, please?

THE WITNESS: Christopher Hess.

SPECIAL AGENT CHRISTOPHER HESS, GOVERNMENT'S WITNESS, SWORN DIRECT EXAMINATION

BY MR. CHADWELL:

Q Please repeat your name?

A Christopher Hess.

[33]

Q How are you employed?

A I'm a Special Agent with the Federal Bureau of Investigation.

Q How long have you been with the FBI?

A Just over nine and-a-half years.

Q What's your formal educational background?

A I have an undergraduate degree in business administration and a master's degree in public administration.

Q And have you worked as a police officer anyplace else?

A I have.

Q Where?

A In the City of White Plains in New York, and the town of Mount Pleasant in New York.

Q And what have you done within the FBI?

A I'm assigned to the Detroit division and I'm assigned to the violent crime task force.

In addition to my daily assignment to the task force, I'm on the SWAT team and a member of the cellular analysis survey team.

Q What does the violent crime task force do?

A The violent crime task force is a joint task force between federal agencies, state and local

agencies, and we investigate a variety of violent criminal acts, including kidnappings, gang activity, robbery, homicide, fugitives, kidnappings, extortion.

[34]

Q And do you use your cellular analysis involvement to assist your work with the violent crimes task force?

A Yes, I do.

Q Do you also assist state and local officials in some of their cases?

A Yes.

Q What kinds of things would you assist state and local people with in reference to cellular analysis?

A I've provided assistance in a variety of cases, from public corruption to violent incident crimes to serial homicide investigations, as well as national security investigations and white-collar types of investigations.

Q Could you tell the jury about what the CAST team is?

A CAST is the acronym we use for the Cellular Analysis Survey Team. It's a group of agents within the FBI who have received specialized training with regard to how cell phones and cell phone companies produce their records, how the cell phones operate, how their networks operate.

At this point in time there is roughly 30 agents in the FBI who have gone through the

certification process. I was one of the first ten to do it.

Q Are you now also involved in teaching other FBI agents?

A Yes, and other law enforcement as part of our responsibility.

Q What kind of teaching have you had in that regard?

[35]

A Well, I've conducted courses for state and local, as well as other federal agents and law enforcement entities, including prosecutors, with regard to the use of cell phone technology investigations.

Q Have you spoken at conferences, FBI Academy, Department of Justice?

A Yes, I've presented at different conferences. Yes.

Q How much training did you go through to be certified by the FBI in cellular analysis?

A It's well over 400 hours of training that I have personally participated in.

Q And who conducts the training of the FBI?

A There is a variety of entities, private corporations. The bulk of our training comes directly from the cellular providers, including their law enforcement relations which handles the legal requests for the records, as well as the engineers from the various companies to explain how their individual companies operate.

Q Okay. And these are the companies that actually construct and place cell towers?

A Yes.

Q Throughout the United States?

A Yes.

Q They monitor their own cell towers?

A Yes, they do.

[36]

Q They have engineers to determine if, say, another cell tower is needed in a particular area or not?

A Yes.

Q And what are these companies?

A The major providers that we might have received training from would be Verizon, Sprint-Nextel, Metro PCS, US Cellular, T-Mobile, AT&T, Cricket.

Q And how many agents would you say that have now been involved in training?

A The last count, somewhere between 1500 and 2,000.

Q Okay. And I assume they're not all located in Michigan, this is throughout the United States?

A Correct.

Q So you've been recognized by other agencies other than the FBI as having expertise in this area?

A Yes.

Q And other law enforcement agents who have received your training then go on to work cases?

A Yes, they do.

Q And what kind of cases would cellular analysis be useful in and how would these investigators use that?

A Well, I would say that cell phone analysis is pretty applicable to just about any investigation out there, again, from terrorist investigations right down to a simple larceny investigation.

[37]

Q Let me ask you about a recent case you were involved in.

There was a murder out in Ann Arbor and some suspects were tracked down in another state.

A That's presently in litigation, so --

Q So we don't want to discuss cases that are in litigation.

A Correct.

Q But have you been involved in cases where people had to be tracked down through cellular technology?

A Yes.

Q Okay. And you've successfully been able to track people?

A Yes.

Q Locate people who are wanted for whatever?

A Yes.

Q How many cases have you personally worked on involving cellular record analysis?

A Well over 100, I would say.

Q And can you just go through some of the cases, not in litigation, but the types of cases?

A Personally, I've used the analysis in my own investigations with regard to gang activity. I have used it successfully in some serial homicide investigations, kidnappings, Amber alerts where successfully located a child that was the victim of a kidnapping, as well as the perpetrators who conducted the kidnapping.

Phone robbery investigations, I've used it both [38] where I was the case agent, as well as providing assistance to other investigators.

I've used it in white-collar and corruption cases where there was organized crime.

Bribing city council members in another jurisdiction, we were able to use cell phone analysis to corroborate information.

Q And so being trained in cellular analysis is one thing theoretically, but you actually put it into play in 100 cases or more?

A Absolutely, yes.

Q Okay. And so you've seen how it works out, right? You can theoretically be taught things by these cellular carriers, but having been taught them, you've applied them to cases?

A Yes. Practical experience, yes.

Q And what you've been taught has proven out to be accurate in these cases; --

A It has been reliable, yes.

Q -- is that right?

So what you thought was true, hypothetically, you have proven to be true through your experience?

A Yes.

Q And you testified previously in federal court as an expert witness in this area?

[39]

A I have.

Q In what courts and approximately how many times?

A Approximately, in the ballpark of 30 or more times. And I've testified here in the Eastern District of Michigan, the Western District of Michigan, the District of Rhode Island, Virginia, for federal court and state court. I've testified here in Michigan on a number of occasions.

Q Sir, directing your attention to this case, were you asked to perform a cellular telephone record analysis?

A I was.

Q And can you tell the jury, in general, how does a cellular telephone work?

A A cellular telephone is a two-way radio in the simplest of terms. It transmits a frequency and it receives a frequency. And those frequencies are tuned with your cell phone carrier. So if you

have a Verizon phone, you tune into Verizon towers to communicate, to have your telephone calls go back and forth.

Q So the towers communicate with the phone and the phone's communicating with the tower?

A Correct.

Q And are there occasions where someone who might have a Verizon phone might end up on another carrier's tower?

A In a roaming situation, if Verizon doesn't have coverage in a particular area of the country, they would have an [40] agreement with another company to be able to utilize their infrastructure.

Q And what determines what tower the cell phone is going to be communicating with?

A When your cell phone is in an idle mode, it's constantly scanning the environment for radio frequencies, and it's looking for a strong signal from the provider that your telephone is with. And as it moves around, that information is constantly calculated and it changes. So if I'm in the influence of this tower at one moment and I start to move around, the towers that I'm starting to get closer to, their signal strength improves and the phone chooses that as its serving cell site.

Q So the phone is constantly looking for a friend to communicate with?

A Yes, yes.

Q And it likes the strongest one, in general?

A Yes.

Q What would the tower with the strongest signal be referred to by someone like you?

A As a serving cell.

Q Okay. Can you describe for the jury how a cell tower works as distinguished from the phone?

A Again, a cell tower is a large antenna that emits a radio frequency and it puts out identifying information for its [41] subscribers to let them know that you are in the area of your carrier. "Here's a Metro PCS cell phone tower. Use me when you're in this area."

Q Okay. And are cell towers different from one another?

A In what regard?

Q They come in different shapes and sizes or --

A Yes.

Q Do they have particular sides or --

A Cell towers are broken down into what they call sectors. In most cases, a cell site will cover 360 degrees. And often the tower is broken down into three sectors which allows for an increase in usage on the tower. So that if somebody was on the north side of the tower, they use the north side of the tower, the north sector.

If they're on the south side of the tower, they use the south side.

Q So each sector would be 120 degrees each --

A Roughly, yes.

Q -- to cover the 360?

And does each of these three sectors send a different signal, like in a certain direction?

A Yes. There is differentiation in the signal.

Q Okay. So if a cell phone -- if a guy is driving with a cell phone down I-75 and there's a cell tower, is it possible that the phone will be communicating with this particular [42] tower in one sector when they're on one stretch of 75 and then as they head down the road, switch to a different sector?

A Yes.

Q Of that tower?

A Yes.

Q And if maybe they got off 75 and took a right-hand turn, they might even, depending on the angle, start communicating with the third sector of the same tower?

A Correct.

Q If that turned out to be the closest tower, right?

A Yes.

Q And how and why are towers positioned in certain locations?

A The number of towers in an area is largely dependent upon the number of subscribers in the area. So when you have an urban environment where there are a lot more people, a lot more population, cell companies will put more towers, more antennas in the area to handle that volume.

When you're out in a rural area, perhaps not as many towers, and also taking into consideration things like topography and construction in the area.

So in Chicago, let's say, there's a lot of high-rises. There may be a larger number of towers to cover areas that would be obstructed by the buildings.

[43]

And if you have a mountain range, they would change the orientation of the towers.

Q And do towers overlap one another in coverage?

A Yes. There is a degree of overlap, sort of the, "Can you hear me now" commercials from Verizon.

Q So there could be Verizon towers that have kind of overlapping coverage of each other?

A Yes. There's boundaries to the towers but they want to -- the companies want to make sure that they fill as much of the space as they possibly can so they don't drop your calls.

Q Okay. And how far away can a tower send a signal and/or a cellular telephone receive a signal?

A Theoretically, if a tower is at full power and there's no angle and there is no interference, a tower can go up to 20 miles. But the limiting factor, and it is the power of the cell phone, which would not be able to communicate back to the cell phone tower.

So in an area like Detroit, in my experience, typically you would see coverage for a particular cell site anywhere from a-half mile to two miles.

Q And are antennas of cell towers pointed upside down?

A The antennas are at the top of poles or at the top of a building, and in that, completely perpendicular to the ground. They are actually angled down towards the ground to direct the radio frequency to a particular area.

[44]

Q I think you said some of this already, but what are all the factors that affect the propagation of a signal from a tower?

A Oh, certainly buildings, topography, so the shape of the earth, the -- again, if there are mountains or hills. The time of year has an effect on it to some degree, whether there are leaves on the trees or no leaves on the trees. Weather to some degree may have an effect on the signal.

Q Now, can you determine by any degree of certainty the area that each sector of a cell tower is covering?

A Yes. Based on training and experience, we can come up with a geographic area for that coverage.

Q What's a tower's footprint?

A The footprint would be what the coverage area is of a particular sector or the entire coverage area of the cell site.

Q Now, the signals kind of put out away from the tower; is that what the tower is doing?

A Yes.

Q And how is that signal able to be measured or observed?

A Well, there is the chips or the computers inside the phones are measuring what the signal strength is received off of that tower.

Q And how do cellular providers measure the signals that their towers are producing and try to determine if they need [15] more towers, what kinds of instrumentation do they use?

A Well, the engineers would use equipment that measures signal strength, and do various testing, drive testing and also monitor from -- they have like emergency operations centers or operation centers that monitor the activity and the performance of the networks.

Q I think you have already said that some of the big companies have their own cell towers and sometimes they share towers?

A Yes. In most cases the large companies have their own cell sites. The smaller mom and pop type of companies would use those large companies' towers.

Q Okay. And can different companies share even the same pole?

A Yes. I'm sure most have seen a cell site where there's numerous antennas at the top, and those would represent different companies. So somebody may own the physical pole itself and

then lease space to each of the different providers.

Q Now, as the companies are maintaining these towers and selling cell service to people, making money with these things and determining how many towers they need where in the best possible way, what kind of records do they keep of their cellular activity to assist them in their business?

A They would use -- they would keep call detail records for [46] the telephone usage by their provider -- excuse me, by their subscribers.

Q What's included in call detail records?

A Call detail records would contain the date and time of a call, the length of the call, what numbers were engaged in that call, who called you or who did you call, any special features like call waiting or call forwarding, as well as the cell sites. And in most instances now, the companies provide you -- provide information on the tower where the call originated and the tower where the call terminated.

Q And do they collect and store data related to the cell towers themselves, also?

A Yes.

Q Sir, how did you come to be involved in this case? This is not to case, right?

A No, I am not the case agent on this.

Q How did you get involved in this case?

A I was asked to provide assistance by Agent Ruiz.

Q And what assistance did you provide?

A He asked that I review two telephone numbers to try and determine if, in fact, they were in the area of a series of robberies, in and around the time of the robbery.

Q And did you review call detail records from T-Mobile, Metro PCS and Sprint?

A I did.

[47]

MR. CHADWELL: Your Honor, at this time I would offer into evidence a stipulation of the parties, Government Exhibit 58.

THE COURT: Sure.

MR. CHADWELL: I would like to read the stipulation at this time.

MR. EARLY: No objection.

MR. GUREWITZ: No objection.

THE COURT: Go ahead.

MR. CHADWELL: Okay.

"The parties stipulate and agree that the telephone call detail records from T-Mobile, Metro PCS and Sprint utilized by FBI Special Agent Christopher Hess to formulate his analysis and opinion are authentic and accurate business records of these companies."

THE COURT: All right. The stipulation is received.

MR. CHADWELL: Thank you, Your Honor. If I can just have a moment, Your Honor?

BY MR. CHADWELL:

Q Now, sir, I'm showing you what's been marked as Government Proposed Exhibit 57.

Do you recognize that document?

A I do.

Q What is that document?

[18]

A It's a report that I prepared with regard to the cell phone analysis I conducted.

Q So you reviewed the records we have been discussing here from the three companies, the call detail records?

A Yes.

Q In reference to two different telephone numbers?

A Yes.

Q And you reduced your analysis to a written form; is that right?

A Yes.

Q You prepared charting as part of this also?

A Correct.

Q And that's the document in front of you?

MR. CHADWELL: Your Honor, I move the admission of Government 57 at this time.

THE COURT: Any objection?

MR. GUREWITZ: Could I just confer with Mr. Chadwell about this?

(Discussion off record)

MR. GUREWITZ: I have no objection.

THE COURT: Mr. Early?

MR. EARLY: None, Your Honor.

THE COURT: All right. Exhibit 57 is received.

MR. CHADWELL: Thank you, Your Honor.

BY MR. CHADWELL:

[49]

Q And as we go through this, hopefully that's a good enough copy in front of you to refer to. We also will be using the big-screen also.

Sir, as part of your analysis, let's talk about the first phone number that you analyzed in reference to call detail records of these mobile telephone companies that we have been talking about.

What is the first telephone number that you --

A The first number is (313) 579-8507.

Q And, sir, is that the same number that appears on this board back here next to the name Big Tim?

A Yes.

Q Sir, what did you determine from your review of call detail records in reference to that telephone number pertaining to the date of March 4, 2011?

A That was a T-Mobile telephone number and there was a reported robbery March 4, 2011 at 2:52 p.m. in Warren, Ohio at a RadioShack.

And review of the call detail records and tower records in and around that time, that cell phone

used a cell site within proximity to the RadioShack in Warren.

Q Did you prepare a map to kind of illustrate that?

A I did.

Q Okay. And that's part of this in front of you? It's a little bit off screen.

[50]

Sir, what area is this a map of?

A This is a map of Warren, Ohio.

Q And there is a blue square as part of this map; is that right?

A Yes.

Q What is that location?

A That represents the RadioShack at 2553 Parkman Road N.W. in Warren, Ohio.

Q That's right here (indicating)?

A Yes, sir.

Q And then there's a red dot. What does that represent?

A That depicts the T-Mobile cell site.

Q And there is two calls that are highlighted at the top of your chart here. What does that represent?

A The nearest call to the reported time of the robbery was at 2:20 p.m. on that date, and that number -- or that call is highlighted, that's line 7738, the yellow highlighted area.

Q It says that call lasted 31 minutes?

A Yes.

Q And then there was a second call too, that you looked at?

A Yes. The next call after that was at 3:12 p.m., less than a minute, utilizing the same cell site.

Q Okay. And were you able to determine the location of the phone with the number 579-8507?

A Based on the columns of -- column D and E, combined with [51] the columns H and I, you have the first LAC, which is the location area code, which would be -- the analogy would be to a ZIP Code.

And then the number that's associated with first cell, last cell, would be similar to like your street address. So in other words you could have 123 Main Street in 100 cities across the country, but based on ZIP Code, we would know that it's in Warren, Ohio. The 8499 is the ZIP Code and I know that that cell site is in Warren, Ohio.

Q Okay. So the 8499 I'm reading up there is the code?

A Yes.

Q That's used by the cellular telephone companies?

A Correct.

Q That indicate particular tower and location?

A That would indicate a geographic region of the country.

Q Okay. And I see that you have drawn lines out from the red dot tower; is that right?

A Yeah, right.

Q Does that represent a sector?

A That illustrates the sector, yes.

Q So there's two other sectors. If we drew out the lines we would see two other sectors; is that right?

A Yes.

Q But on the date and time of the robbery, that cellular telephone was in that -- in the sector closest to the [52] RadioShack?

A Yes.

Q Is that your conclusion?

A Yes.

Q Sir, I want to also ask you if you looked at or analyzed call detail records including tower locations for a second telephone number?

A I did.

Q What was that second telephone number?

A (313) 412-6845.

Q And, sir, is that the same number that we see on the board next to the name Little Tim?

A Yes, on the bottom of the board.

Q Little is misspelled as "Lil" at the bottom?

A Yes.

Q 412-6845?

A Yes.

Q Sir, did you look at several dates pertaining to that number?

A I did.

Q Let's start with the first date that you looked at and location.

A The first date was December 13, 2010. I reported a time of 10:35 a.m.

Q Okay. And you created a map and a chart?

[53]

A Yes.

Q To illustrate your conclusions from that?

A Yes.

Q And again, we have a blue square on your chart right here (indicating)?

A Yes.

Q What is that blue square?

A That represents the location of a RadioShack at 13330 Jefferson Avenue in Detroit.

Q Okay. And we also have some various red dots throughout this. What are those?

A The red dots represent the Metro PCS towers in that area.

Q That was a Metro PCS phone?

A Correct.

Q And there's a dot here with a sector drawn out?

A Yes.

Q And so what does this tell us in terms of your conclusions as to the location of the telephone, 412-6845, on December 13, 2010 at around the time of the robbery?

A Well, based on the two calls that are highlighted, the telephone used cell sites on the east side and particularly used cell sites with sectors that would be consistent with the geographic area that encompasses the robbery scene.

Q And so can you tell us approximately when that phone was where?

[54]

A Well, at 10:24 a.m. there was a telephone call that originated and terminated on tower 127, which is the dot just to the southwest of the robbery scene. And it used two sectors on that tower for the originating and terminating.

And then at 10:31 a.m., there was a call that was eight minutes in duration that was on tower 145, which is just to the northeast of the robbery location, utilizing a sector oriented towards or in the direction of where the robbery location is depicted, and then that call terminated on a tower at the top of the map along I-94.

Q Okay. So just to be clear, this first call up here, 10:24?

A Yes.

Q The phone is down near this tower (indicating)?

A Yes.

Q In one or both of these sectors (indicating)?

A It starts in one and ends in another.

Q So we can see two sectors off this tower, right?

A Right.

Q So at 10:24 the phone is in one of these two sectors going back and forth, right?

A Yes.

Q Later on the same day, seven minutes later, there is a call and now the phone is within this sector up here, (indicating) right? It's no longer hitting off this tower.

[55]

It is traveling in this direction (indicating)?

A Right. It's on a different tower, a different sector.

Q Okay. The direction it traveled is -- from this tower, the direction traveled was towards the RadioShack; is that right?

A Yes.

Q And after traveling towards the RadioShack at this time while this call is still going on, it later ends up in this direction (indicating)?

A Yes.

Q And it starts bouncing off that tower on the top?

A Well, the call that originated on the -- the call that originated on tower 145 ended on tower 164, which is the one that's up towards the freeway there.

Q And which one is 145 again?

A One-forty-five is the one just to the northeast of the robbery location.

Q The northeast being this way (indicating) on the map?

A Yes, towards the upper right-hand corner.

Q Sir, did you also perform an analysis of this same telephone number for December 18, 2010?

A Yes.

Q And for what location?

A This was related to a T-Mobile robbery or the robbery of a T-Mobile store. On the police report, I believe it was [56] 4:50 p.m., and that robbery location was 14304 Gratiot Avenue, in Detroit.

Q And again we have a blue square, kind of in the upper middle of that chart; is that right?

A Yes.

Q What does that represent?

A That's the location of the T-Mobile store at 14304 Gratiot.

Q And you have some phone calls that you used to do this tracking. And I'm not sure if we made it clear when I originally asked you some preliminary questions, but you are not able to do this unless the phone is active; is that correct?

A Correct.

Q And what's it take for the phone to be active?

A Engaging in a call, receiving or sending a call.

Q So if the phone is just in my pocket, and I'm not calling and no one is calling me, you couldn't really do this?

A Right. It's not populated in the call detail records.

Q Even though it might be communicating in there, --

A That's correct.

Q -- searching for a tower or whatever, but it's the actual call itself that enables you to get a strong enough signal to do what we're talking about here?

A Yes. So when the phone requests resources, in other [57] words, for example, if you dial a number and you hit send, that tower information is populated in the call detail record.

Q Okay. So, sir, based on these calls, what can you tell us about the location of the 412-6845 phone at around the time of the robbery and at around the location of the robbery?

A There was a call at 4:46. It was an outgoing call that started on tower 173, which is down the center of the map, the lower dot.

Q Right down here (indicating)?

A Yes.

Q Okay. And you have an arrow pointing to the right. Is that meant to be part of a sector?

A It represents the orientation of the cell sector, what direction that signal is emanating.

Q So the phone starts out here, right?

A Yes.

Q At 4:46?

A Correct.

Q And where does the phone go from there?

A Then it terminates on a cell site just to the north, which is cell site 188, sector four.

Q Okay. Is that this cell site here (indicating)?

A Correct.

[58]

Q So the phone has gone from here to here (indicating); is that right?

A Yes.

Q Which is in the general direction of the T-Mobile we have been talking about?

A Yes.

Q And did that cover both calls up there?

A The next call at 4:53 originated and terminated on tower 188, sector one, which was granted to the 12 o'clock direction.

Q So this is 188 again?

A Yes.

Q You say it's oriented toward 12 o'clock, meaning this way (indicating)?

A Yes, to the north.

Q So the phone, according to the records you've looked at, went from here, then in this direction (indicating)?

A Yes.

Q Around that time and date?

A Correct.

Q Sir, did you also look at the same phone numbers, phone location back on the robbery we've discussed previously, March 4, 2011, Warren, Ohio, around 2:52 p.m?

A Yes.

Q Again, we see the blue square in the middle?

[59]

A Correct.

Q What is that?

A That's the location of the RadioShack at 2553 Parkman Road N.W., in Warren, Ohio.

Q And I see it says Metro PCS and Sprint PCS on the bottom of that charting.

What does that mean?

A The Metro PCS box, the red dots represent the coverage for Metro PCS towers. And the Sprint PCS box represents the coverage for Sprint. It's to illustrate the fact that Metro PCS does not have coverage in the Warren, Ohio area, and that roaming agreement is with Sprint, which does cover that area.

Q Okay. So if you are living in Michigan or Ohio, you probably wouldn't want a Metro PCS phone?

A Michigan, you're okay; Ohio, not so good.

Q But Sprint PCS covers most of Michigan and most of Ohio according to that mapping?

A Yes.

Q So a Metro PCS phone drives down to Ohio, it's going to start utilizing Sprint?

A If you have that agreement with Metro PCS.

Q And is that what occurred here?

A Yes.

Q Okay. And can you tell the jury what you concluded about the location of the 412-6845 phone?

[60]

A There was call activity at 2:12 p.m. and 3:20 p.m. and that -- those calls originated and terminated on tower 208, 293. Again, that 208 represents the equivalent of the area code or the ZIP Code, excuse me. And 293 represents the tower address. And those are represented by the red dot right between the Metro PCS and Sprint insets.

Q I'm seeing it as a blue dot; is that --

A I'm sorry, a blue dot, yes.

Q So it sounds like it was not call activity right at the time of the robbery. There was before and after call activity on this one, right?

A Yes. Those are the two closest calls to the robbery time.

Q And they both show the phone being down by the tower that we can see, which is about how far from the RadioShack?

A I think that was roughly three quarters of a mile to the south.

Q It looks like it's the closest tower to the RadioShack, but it's about a half-mile away that those calls occurred?

A Right.

Q Sir, did you also conduct an analysis of call detail records and phone location for the 412-6845 number for April 5, 2011?

A Yes.

Q And you prepared a chart on that also?

[61]

A Yes.

Q Again, we have the blue square. What is that?

A That is the robbery location of a RadioShack at 14501 Woodward Avenue in Highland Park, Michigan.

Q Okay. And you compared the time of the robbery with some calls that were being made?

A Yes.

Q What did you conclude there?

A Prior to the time on the report which was 2:40, there were two calls, one at 2:21 p.m. and one at 2:30 p.m. The 2:21 call utilized tower 502 and

terminated on tower 170 and 502 is the tower to the bottom represented.

Q Right here (indicating)?

A Yes.

Q So it is within this sector, right?

A Yes. That happens to be a six-sided tower, so the coverage area actually narrows.

Q So this is a little more precise than some of the other towers in terms of sector?

A Yes. We go from roughly 120 degrees of coverage to 60 degrees of coverage.

Q So it's within a more precise sector than some of the others we've been looking at to the RadioShack?

A Correct.

Q And the call lasted 15 minutes?

[62]

A Yes, a little over 15 minutes.

Q Okay. And then it looks like this call is overlapping this call?

A Correct.

Q Can you explain that?

A There is another call that came in and they switched over on call waiting, which created another stamp with regard to what tower was being utilized for that portion of the call, which was on tower -- that call waiting interaction started and finished on tower 502, sector six,

which is the tower to the bottom edge of the map.

Q So the phone on this date and the times shown for the calls was in this sector (indicating)?

A Right.

Q And then the phone moved in this direction (indicating) into the sector up here?

A Well, at the termination of the call, 15 minutes later it was on that sector.

Q Okay. How far is it from here to here (indicating)?

A Roughly a mile, if that.

Q Sir, do you know the general direction of Hamtramck, Michigan from these two towers we're looking at?

A I-75 is running right through the middle of the map so it would be north on 75.

Q Is Hamtramck in this general direction?

[63]

A Yes.

Q Or course, you can't see it on the map, but it's in that general direction?

A Correct.

MR. CHADWELL: That's all I have.

THE COURT: Mr. Gurewitz, would you like to take the morning break now or would you like to proceed?

MR. GUREWITZ: I would. I need to do something here with this equipment.

THE COURT: Very good. So we will give the jury their morning break, okay?

MR. CHADWELL: Yes, Your Honor.

THE COURT: We'll be bringing you out about 20 to 11, okay, 20 to 11.

COURT CLERK: All rise.

(Jury out at 10:19 a.m.)

COURT CLERK: You may be seated.

MR. GUREWITZ: Your Honor, I just wanted you to know that the attorney for the witness I talked about this morning is in the courtroom now.

THE COURT: Yeah. I saw Mr. Kaplovitz the first thing this morning, about 9:00.

MR. GUREWITZ: Yes.

THE COURT: And again, just so the record is -- the witness is who again?

[64]

MR. GUREWITZ: His name is Dewan Taylor.

THE COURT: Okay. And I assume that your expert, Mr. Harmon, has been in the courtroom all morning?

MR. GUREWITZ: He has been.

THE COURT: Okay.

(Court in recess at 10:21 a.m.)

COURT CLERK: All rise.

(Court in session and jury in at 10:48 a.m.)

COURT CLERK: Please be seated.

THE COURT: Mr. Gurewitz, you may start with your cross-examination when you're ready.

MR. GUREWITZ: Thank you.

CROSS-EXAMINATION

BY MR. GUREWITZ:

Q Good morning, Agent Hess.

A Good morning.

Q Forgive me if I missed the description of your background information, but have you had training or experience as an engineer?

A Engineer training?

Q Yes?

A No.

Q What was your college degree in?

A I have a business administration degree for undergrad and a master's in public administration.

[65]

Q Have you taken any continuing education courses related to engineering since you finished your master's degree or left college?

A The extent of my engineering training is through the radio frequency engineers from the cell phone companies.

Q That's sort of on-the-job training. You've had it since you've been working with the FBI?

A Correct.

Q The area that you talked about in a general way to those who don't have knowledge of it may appear to be somewhat technical; is that right?

A Yes.

Q You are familiar with the term also kind of generally from your work on this technical area, luddites. I think it's spelled l-u-d-d-i-t-e-s. I'm not sure if I got it right. Do you know what that means?

A No, I'm not familiar with it.

Q Well, are you familiar with the ways people use words to describe those of us who don't have that kind of technical background?

A I'm not sure what it is that you're asking.

Q Well, I'm just -- there are those people who have technical knowledge and some people don't, right?

A Correct.

Q And that's perhaps why you're here today, because you do?

[66]

A Correct.

Q And please forgive me if I make some mistakes in my questions about some of these technical terms. I'm doing the best I can because I fall in this other category, someone who does not have that kind of experience.

You've had, you said, about 400 hours of training since you have been with the FBI to -- that brings you up to speed to be able to talk

about the things that you've testified about here today?

A Correct.

Q And as a preliminary matter, you know that there are also people who as private consultants are doing similar kinds of advising or providing testimony; isn't that right?

A Sure.

Q Have you met Ryan Harmon in the course of your experience who does private consulting in that area?

A I have not.

Q I'd like to ask you about some of the background information that you testified went into putting together the opinions that you've given today, okay?

A Okay.

Q And just to be clear, when I say opinions, the testimony that you have given here today about the location of cell phones in relationship to particular cell phone towers is opinion, isn't it?

[67]

A Correct.

Q It's not a fact.

A It's based on my training and experience.

Q Right. So we can put information into two different categories. One is factual information, right?

A Yes.

Q And that would be represented in relation to this specifically by the actual records that were obtained from the cell phone companies that indicate the time and number of telephone calls, right?

A Yes.

Q What you have done, also in a general way, is put together that information, arrange it, and done your analysis and to give your opinion; is that correct?

A Yes.

Q Would it be fair to say that in giving your opinion, the kind of opinion that is given is not an exact science, is it?

A What's not an exact science?

Q To reach the opinions that you have given, they're not -- it's not an exact science like a physicist weighing elements or a chemist analyzing the content of something. What you have told us about here is your opinion?

A Right, formulated from my training and experience. Yes.

Q The records that you started out with that have the phone number information are called what?

[68]

A Call detail records.

Q And do you have some of those with you up there today?

A I don't know if they are contained in the exhibit.

Q Oh, the book you have there are the exhibits. Okay.

Well, in a bit, I will show you some examples of those. For purposes of illustration, maybe it would help if I used one now.

What I've shown you, Mr. Hess, is a page from the call detail record relating to this case; isn't that right? Do you recognize that?

A I have no idea if this number is related to this case.

Q Okay. But that is a page that is a call detail record?

A It's an example of one, yes.

MR. GUREWITZ: Your Honor, I represent to the Court that that is part of the records to which we have previously entered in stipulation as to their authenticity. And I move for its admission as Exhibit 2.

MR. CHADWELL: No objection.

THE COURT: All right. Defendant's Exhibit Two is received.

BY MR. GUREWITZ:

Q I'm going to attempt to display this. Here we go.

Agent Hess, could you explain what these columns are in this record? And then I would like to ask you how you use those in putting together your analysis.

[69]

So the first column represents what, please?

A The date of the call.

Q And then we have what, the time of the call?

A Correct.

Q And this column here, the top one, that probably would -- it says "outgoing call"?

A Yes.

Q And that means a call that was made by the particular cell phone?

A Yes.

Q And going across, the next column represents a number. Is that the number of the call?

A It would be the -- I can't see what the column header is. It's that gray area.

Q Okay. Going across this particularly, I want to ask you for the first one at the very top, the last series of columns beginning with where it says "Detroit" and then there are numbers after that, these records are usually set out the same way from Metro PCS when you review them?

A Yes.

Q So "Detroit" is there to signify what, please?

A The market.

Q And then the number signifies what about the market?

A Whether it's market one or market two in Detroit.

Q And does that indicate which tower is used?

[70]

A It represents a geographic area of the state.

Q What about the number 117?

A One-seventeen is the tower that's used. It's a cell site identifier.

Q All right. Is there anything there to indicate with regard to the cell site and the particular tower? You talked about antennas. Which antenna was used on the tower?

A The comma between where it says "Detroit one" and "117," the number two represents the sector.

Q Now, this is an example of one of the pages from the records that were made available. Did you do anything to obtain these records yourself?

A No.

Q In this case?

A No.

Q They were provided to you?

A Correct.

Q Did you indicate to Agent Ruiz then what records you thought were necessary for you in order to perform your work?

A Yes.

Q Would it be fair to say that when you did this analysis then, the records go in chronological order; is that right?

A Yes.

Q And they then would list or they should list all the calls that were recorded by the cell phone company for the [71] particular phone during the time period that is represented in the records, right?

A Yes.

Q It would show calls that were in this category of made and received, right?

A Yes.

Q And calls that are call waiting?

A Correct.

Q And based upon your experience, what does that mean?

A That's another call that is received.

Q And these records then recorded the same kind of information, don't they, for a call that is a call waiting, that is, it shows the tower that was used and the particular antenna; is that right?

A Yes.

Q Is that something that you had an opportunity to look at doing your analysis?

A There was an instance of a call waiting.

Q Well, there's more than one, in fact, wasn't there?

A I don't know that there was, but with regard to the dates and times I looked at there was one instance.

Q Yeah. It was part of what you did to determine from all of these calls which ones were relevant

to the opinion that you were asked to give; isn't that right?

A I looked at the calls as close to the robbery report time [72] as were available on the records.

Q You looked at all of the ones that were close to the time that was available on the record; is that your testimony?

A Yes.

Q You have given testimony here about this exhibit that is part of I believe, 57.

MR. GUREWITZ: Is that correct, Mr. Chadwell? Is that the number here?

MR. CHADWELL: Yes.

BY MR. GUREWITZ:

Q You created this; is that right?

A Yes.

Q Did you use some kind of -- tell me what your technique was for preparing this.

A The cell phone company provides a list of where their tower locations are.

Q Was that included in this example, the call data report page that I showed you?

A No.

Q How was that obtained?

A Through legal process; search warrant, court order.

Q Did you obtain those records for your use in connection with each one of these documents that you prepared?

A Yes.

Q And just so I understand how to refer to this, what I [73] have exhibited right now is one of these pages for December 13, 2010.

What do you call this page? Is it a map or something else?

A It's a map, a demonstrative.

Q Okay. What else do you use in order to create this map, the one that's displayed here for December 13th?

A The call detail records are provided in electronic format in an Excel spreadsheet. The mapping software is Microsoft MapPoint. The call detail records are utilized and the tower list is utilized.

Q Are you familiar with a program, software called Pen-Link?

A Yes.

Q What is that?

A Pen-Link is an analytical tool with regard to cell phones.

Q And did you use that in connection with the creation of these maps?

A I did not.

Q Then how did you actually create the map that shows the specific location of the towers on the map? How did those get put on there in the places that they appear?

A There's an import function in the Microsoft mapping software that allows you to import a data set based on in [74] this case the tower latitude and longitude.

Q So the information that you're talking about that you received from the cell phone companies that allowed you to locate them is something that lists the kind of map coordinates that we hear about longitude and latitude for each one of these towers?

A Yes. They provide a physical address, as well as a latitude and longitude.

Q With regard to each of these towers that you have identified on this one that's up there right now for December 13, for example, there are sectors that pertain to each tower; isn't that correct?

A Yes.

Q Is that important to you in your work, what the sectors are?

A Yes.

Q Why is that?

A Because they tell you the side of the tower that was utilized for a particular call.

Q And the number of sectors on the tower depends on the number of antennas on it; is that right?

A It depends on whether it's oriented to a three-sided or a six-sided tower.

Q When you're talking about sides of the towers, really what you get to is the antenna is the

significant part, [75] because that's where the signal from the phone is either received or sent to, right?

A Yes.

Q There are some towers that are three and some that are six?

A And some that are one, yes.

Q Have they all been regularly divided into equal parts of a 360-degree radius?

A I can't say that all are, no.

Q Some vary, don't they?

A Yes.

Q And how do you take that into consideration when you're doing your work?

A I look at what is called the beam width.

Q The what?

A The beam width.

Q Is that information something that also came to you to do your analysis here?

A And the tower list.

Q Now, you talked about a number of things that affect which towers' signal from the phone might reach. There are a lot of factors, aren't there?

A Sure.

Q And those include things that you talked about, such as the -- whether it's a mountainous area or a flat area that [76] the tower is located in?

A Yes.

Q And whether there are high buildings or not in a particular area?

A Yes.

Q It also includes things that relate particularly to the functioning of individual cell phones, such as the strength of the battery in a particular phone; is that right?

A Yes.

Q How would that affect a selection by the phone of the tower which is going to be used to send or receive a signal?

A The power management of the phone is relying on the amount of power that's still remaining in the battery.

Q So if the phone has a weak battery, it would have to be closer to a tower than one with a strong battery?

A Not necessarily.

Q Okay. That varies, too, depending on other circumstances, right?

A Yes.

Q And another factor that affects the distance is the weather; isn't that right?

A To some degree, yes.

Q Well, to the extent it does, the temperature might make a difference?

A Yes.

[77]

Q And things that are going on relating to some activity or something like that, I don't know the term, might make a difference, interference in the air?

A Yes.

Q The amount of activity that is going on at a particular time when the call is made might also affect which tower is used; isn't that right?

A No.

Q Well, if a call is made at between the hours of four and six in an urban area where a lot of people are driving and probably using cell phones when they shouldn't, there's a lot of activity.

Wouldn't the congestion of -- I'm using the word "congestion," but the amount of activity and phone calls at that time affect the availability of which tower would be used?

A The phone number doesn't know what the volume is on the tower.

Q But towers have limits on how much reception they can provide; isn't that right?

A For traffic channels?

Q Yes.

A Yes, it has limits.

Q So one of the factors then that comes into play because of all of those things which you just testified about as [78] variables that affect this

is the relationship between a tower and an adjacent tower; isn't that right?

A Yes.

Q Why is that?

A Because it affects the coverage area of each tower.

Q In what way?

A Well, if the cell sites are a mile apart versus five miles apart, the coverage area would increase or decrease based on proximity.

Q So it does happen sometimes that a phone call that's made can shift from one tower to another while the call is going on, right?

A Yes.

Q And that can happen because the cell phone moves, right?

A Yes.

Q And it can happen because of some other variables that might be included in the things that you've just testified about, right?

A Yes.

Q And when I asked you early on in the questions I was asking you this morning about whether all of this is an exact science, one of the reasons it's not an exact science is because some of these things you really can't actually determine when you're just looking at records on paper; isn't that right?

[79]

A What things?

Q Well, for example, the variables, such as weather conditions and the battery strength, right?

A Yes.

Q But you should be able to take into account the relationship between a tower and an adjacent tower; isn't that right?

A Yes.

Q On this map for December 13th, how many towers did you identify by number on that map?

A There is three towers.

Q And there is one identified down here at the bottom, that's 127; is that right?

A Correct.

Q And there is one up here, 145?

A Yes.

Q And there is one over here that's on a -- looks like it's on the edge of the Ford Expressway, that is 164?

A Right.

Q That's three?

A Yes.

Q What are those other red dots there?

A Other towers for Metro PCS in the area.

Q You made a decision not to attach numbers to those?

A Those towers were not utilized with regard to the call [80] detail records.

Q Because they didn't relate to the two calls that you chose to put up at the top of this map, is that right?

A Right.

Q When you talked about a place where a phone was located at the time of the call, are you referring to what you mentioned as a service area?

A Yes.

Q And can you describe then what a service area actually is for the ladies and gentlemen of the jury?

A For illustration, if defense counsel's podium is your cell site and it's broken into three sectors. the gallery would be a sector, that area to the back of the room would be the service area. To the jury box side, service area, to the defense side, service area.

Q Except, in fact, these service areas aren't the size of 15 to 20 feet, are they?

A No.

Q You just did that for an illustration, right?

A Correct.

Q What would be the physical layout of this? How much distance would be taken up by that?

A It would be based upon proximity to other towers.

Q Okay. So in this case it might depend upon the proximity of the three towers you have located there to the other [81] towers that you don't have numbers for, right?

A Yes.

Q Can you give us some range of what these physical distances in terms of mile, half-mile; how big would those areas be?

A Well, in Detroit, based on my experience, I have seen anywhere from a half-mile coverage to a little over two mile coverage.

Q When you talk about that, what comes to mind is you're talking about a straight-line at the half-mile, but the service area is not just a straight line. It's like sort of a wedge or a pie shape?

A Yes.

Q And it would be narrowest obviously then when it gets to the tower, but when you get out to the edge of it, how big an area would that be? If it's a half-mile to a mile in distance, the part that connects these two spokes of this would be how far apart, mile, mile and-a-half?

A Roughly.

Q So that when you talk about location, a call during a particular time that you have plotted on these maps, you are not saying that the call was, for example, in a parking lot at the corner of Freud and -- well, that doesn't run that way.

Well, Jefferson and Newport, for example, streets [82] that intersect, you are not able to

say that the phone was at a particular place, right?

A Correct.

Q What you would really say at best is that it is somewhere within that area that could be a-half mile to a mile in distance from the tower and then connecting those two, right?

A Right. As well as where the phone isn't.

Q What do you mean by that?

A Well, in previous cases, alibis have been offered and alibis are not found at times, that this would disprove an alibi. So in other words, if we were using those towers and there was an alibi that was provided that the individual was in Harper words, it's not possible to be using those towers while in Harper Woods.

Q But that doesn't really relate to what you're talking about in terms of placing a call within a service area, this pie-shaped distance, a-half mile to a mile out from the tower.

What you're saying is that you've made a determination that a call was at some point in time in that service area, right, when you locate it there?

A Exactly, yes.

Q Okay. Could you have been more precise in your measurement if you had taken into consideration the adjacent towers and factoring in their service area?

[83]

A Well, I didn't measure what the distance is of the coverage area. I simply illustrated what side of the tower was utilized for that call.

Q So you have really not given the jury here today any opinion about exactly where a phone was at any particular time, have you?

A The exactness of it would be within the footprint of that tower on that sector.

Q But more specifically than that, you haven't given us any opinion about where it could have been within that area, right?

A Right.

Q And another thing that you can't do through this analysis in any way at all is to tell us anything at all about who was actually using the phone at the time that the call was made, right?

A Correct.

Q This all is just based upon the abstract, cold analysis of records that come from the phone company and the location of cell towers?

A I wouldn't classify it as abstract.

Q Let me ask you some more specific questions then.

You have used these call data records that are in your work referred to by initials as CDRs?

A Yes.

[84]

Q To list information for a call that was at 10:24 a.m. and had a duration of about four minutes?

A Right.

Q And that originated on tower 127, sector one?

A Yes.

Q And I'm not sure. Is that the one I am pointing to right now?

A Yes, it is.

Q And according to this record, the call terminated on sector two, and that's the one below; is that right?

A The box is below, but it's to the right?

Q The box is below, but both those boxes pertain to the same tower, right?

A Yes.

Q And sector one and sector two then that designates the direction of this particular service area that goes out from that particular cell tower, right?

A Yes.

Q Could you tell us, please, then what those directions are for this particular tower?

A On the bottom of the box you see "ANT orientation." That's antenna orientation. And the number is what's called the azimuth or the point on a compass, the degree point on a compass. So the 1271, the azimuth is zero, so the center of that sector points to 12 o'clock.

[85]

Q Now, is this little piece of plastic I'm holding up an azimuth?

A It's a protractor.

Q A protractor, okay.

Does that help you describing the directions you are talking about?

A A clock works just as well.

Q Okay, there's one up on the wall.

So for the first call that you're talking about here, what is the direction from this tower of the relationship of that call, according to your analysis in that tower?

A Towards 12 o'clock.

Q Twelve o'clock would be as I'm holding the pen straight up, vertically; is that right?

A Yes, that's the azimuth.

Q And by "azimuth," do you mean that the call, according to your analysis, was directly on that line, going vertically from that tower?

A No.

Q What do you mean?

A I mean the sector is based off the azimuth, so if it's 120 degrees, we'll go 60 degrees to the left, which would bring you to ten o'clock on a clock; 60 degrees to the right, which would bring you roughly to two o'clock.

[86]

So somewhere within ten to two is where that device was at the time of that call.

Q And the second part of that call was on sector two. And what's the azimuth for that?

A Eighty.

Q Could you explain what that means here physically, what direction?

A Three o'clock would be 90, so 2:30 on a clock.

Q Is that pointing off to the right side of this map from that --

A Yes.

Q Does that indicate that during the time period of this call that there was movement in the location of the phone in relation to the tower?

A Potentially.

Q That's a possibility, isn't it?

A Certainly.

Q And you can't say that it was or it wasn't?

A Right.

Q It could have shown a different sector because of a whole bunch of variables, right?

A Sure.

Q Now, I would like to show you again Exhibit Number Two.

Hopefully, I can put this up so we can all see it. And there is a call there on 12/13/2010 at 10:31:21.

[87]

Do you see that?

A Yes.

Q Is that call on your map?

A These are not records that I analyzed, so it wouldn't be on that map.

Q They are not records you analyzed?

A No. Those are records for a different telephone number, if that's what you showed me before.

Q I think it is.

MR. GUREWITZ: Just a moment, Your Honor.

THE COURT: Members of the jury, I guess we're going to go up to 2:45 today as we discussed yesterday. And I will be giving you a lunch break probably at about at 12:45 to 1:30. Okay?

MR. GUREWITZ: All right, I apologize.

BY MR. GUREWITZ:

Q Let me show you what I have marked as Exhibit Three.

Does that appear to be a CDR, call detail record for the number that you examined?

A Yes.

Q Okay. And that pertains to the date of December 13, 2010?

A Yes.

Q That is a page that you did examine?

A Yes.

[88]

Q Thank you.

MR. GUREWITZ: Your Honor, I'd move for its admission.

MR. CHADWELL: No objection.

THE COURT: All right. Defendant's Three is received. And that's the call record for December 13, 2010?

MR. GUREWITZ: 12/13/2010.

BY MR. GUREWITZ:

Q I'd like to direct your attention to the top -- the top two lines are the ones that you have listed on your map; isn't that right?

A Yes.

Q Right below that, there are two calls, one at 10:36 and one at 10:37. Do you see that?

A Yes.

Q The information on the last column shows the towers that were used for these calls; is that right?

A Yes.

Q The second call was to -- the second one that you have on your map, shows that the beginning tower was 145 and the ending tower was 164?

A Right.

Q And then for the call immediately below it, the beginning tower is 469 and ending is 164; is that right?

A Yes.

[89]

Q And the one below that starts at 164 and ends at 168; doesn't it?

A Correct.

Q Did you determine the location of those two other towers on your map?

A I did not.

Q These records for calls that were placed or were in existence at 10:36 and 10:37 indicate that there was movement of the phone during that time period; isn't that right?

A Potentially.

Q But that is one possibility, right?

A It could be movement of two feet.

Q Of what?

A It could be movement of two feet versus six blocks.

Q You don't know that at all though, do you?

A No. Not with regard to that, no.

Q The only thing that is really fixed in your analysis that you know for sure is the location of the tower; isn't that right?

A Yes.

Q According to these records and the movement, it is entirely possible that the phone was moving up Jefferson Avenue during extended time from 10:24 through 10:37; isn't that right?

A Sure it's possible.

[90]

Q You can't say with any certainty whether the phone was north or south of the RadioShack store at the time of the robbery, can you?

A No.

Q I would like to ask you some questions about your testimony concerning the map you created related to December 18, 2010.

In your review of the CDRs, the usage records for the phone that you examined, looking for the particular date of December 18, 2010, did you find that there was frequent usage by that particular phone number of the towers that you've identified here, 173, 186 and 188, during the month of December of that year?

A That wasn't the source of my analysis, no.

Q What wasn't the source of your analysis?

A The count call frequency or tower frequency.

Q Oh, you mean it wasn't what you were asked to do?

A Right.

Q Okay. Just a moment.

Now, Agent Hess, if, in fact, there was a pattern of usage by this particular number that you were examining records for, only for the date of December 18, 2010, of those towers from December 1st through December 18th, using the same towers, would that indicate that that phone was someone who lived in that particular

A Yes.

[89]

Q And the one below that starts at 164 and ends at 168; doesn't it?

A Correct.

Q Did you determine the location of those two other towers on your map?

A I did not.

Q These records for calls that were placed or were in existence at 10:36 and 10:37 indicate that there was movement of the phone during that time period; isn't that right?

A Potentially.

Q But that is one possibility, right?

A It could be movement of two feet.

Q Of what?

A It could be movement of two feet versus six blocks.

Q You don't know that at all though, do you?

A No. Not with regard to that, no.

Q The only thing that is really fixed in your analysis that you know for sure is the location of the tower; isn't that right?

A Yes.

Q According to these records and the movement, it is entirely possible that the phone was moving up Jefferson Avenue during extended time from 10:24 through 10:37; isn't that right?

A Sure it's possible.

[90]

Q You can't say with any certainty whether the phone was north or south of the RadioShack store at the time of the robbery, can you?

A No.

Q I would like to ask you some questions about your testimony concerning the map you created related to December 18, 2010.

In your review of the CDRs, the usage records for the phone that you examined, looking for the particular date of December 18, 2010, did you find that there was frequent usage by that particular phone number of the towers that you've identified here, 173, 186 and 188, during the month of December of that year?

A That wasn't the source of my analysis, no.

Q What wasn't the source of your analysis?

A The count call frequency or tower frequency.

Q Oh, you mean it wasn't what you were asked to do?

A Right.

Q Okay. Just a moment.

Now, Agent Hess, if, in fact, there was a pattern of usage by this particular number that you were examining records for, only for the date of December 18, 2010, of those towers from December 1st through December 18th, using the same towers, would that indicate that that phone was someone who lived in that particular

area and had a reason to be [91] there on a regular basis?

A Potentially.

Q So that your analysis doesn't determine why someone is there, why a phone is in a particular place, only that it was at the specific narrow time that you were looking at; is that right.

A Yes.

Q In your analysis to determine -- to investigate the range of criminal activity that you're talking about, is it sometimes your practice to attempt to exclude other possible reasons with regard to phones, that a phone is in a particular location, only that it is associated with a fact that you are investigating?

A Yes, I've used it to include and exclude, yes.

Q And that's a fair thing to do as an investigator, isn't it?

A Yes.

Q You don't typically, as an investigator -- as an FBI agent, you weren't trained just to go out and prove something that somebody else told you happened, right?

A Right.

Q Your job is to examine all the facts, isn't it?

A Correct.

Q But here, all you did was look at the CDRs for one day, right?

[92]

A Because that is what I was asked to do.

Q And who asked you to do that?

A Agent Ruiz.

Q But as an expert in this area providing assistance to the FBI, did you say to him, "Agent Ruiz, maybe it's possible that this phone frequently is in this area and uses the tower at the same times on other days of the week, on other weeks of that month? Shouldn't we look at that?"

Did you say that to him?

A It doesn't exclude the fact that criminal activity could have taken place.

Q But it would have raised some real questions about it, wouldn't it have?

A Not necessarily.

Q But it could have?

A It could have.

Q Do you have within this judgment call that you make on these locations then, for placing a phone call at a particular time within a particular area, do you have a range of certainty that you want to be able to meet in order to reach a conclusion?

A I'm not sure what you are referring to as a "range," sir.

Q You have given us a lot of reasons why it would appear that these determinations you make are not an exact science, right?

[93]

A Right.

Q How comfortable do you need to be with this before you create a report with an opinion on it?

A Based on my training and experience, I'm comfortable in generating the report.

Q Now, what I have displayed now is the map that you have created for March 4, 2011. It says at 2:52 p.m. -- and you have given testimony about review of records. One thing I noticed about this is that you don't have any call information at the top of this map; isn't that right?

A Right.

Q On all the other ones you do?

A Yes.

Q This map pertains to an area where there isn't Metro PCS coverage; isn't that right?

A Right.

Q And you've got the Sprint coverage area depicted down in the bottom with a little box in blue?

A Yes.

Q And for most of that area that shows Michigan, it's just sort of a solid mass of colors of blue.

Is this supposed to represent individual dots that would be cell towers?

A Yes.

Q Where did you get that information?

[94]

A From Sprint.

Q Did you use a court order to do that?

A No, I did not.

Q Where did it come from exactly, how did you get it?

A We have records from prior cases.

Q So based upon these other records -- that's what you, in fact, used, records from other cases?

A I don't recall if I used records from other cases or if Agent Ruiz had furnished the tower list for Sprint.

Q You don't have a present memory now of exactly what you did in order to place the tower information location into your map, right?

A I don't recall if it was an existing tower list already in my possession or if it was one that was provided by Agent Ruiz.

Q Do you have that somewhere in your records that you looked at in preparation for your testimony for today?

A Do I have it somewhere?

Q Yes.

A Yes. I created a map as a result of it.

Q Okay. But it's based upon those records that you placed in the tower where it is represented by that blue dot?

A Yes.

Q And according to your map here, this shows information here that is tower 293; is that correct?

[95]

A Yes.

Q This first number 200 -- I can't tell if it's 200 or 206 or 8.

A Two hundred and eight.

Q That represents the region?

A Yes. Sprint calls it a REPOLL number.

Q What is a REPOLL, R-E-P-O-L-L?

A As I had explained earlier on the T-Mobile, we have the location area code. It's the equivalent of a Zip Code. It puts you in a geographic region of the country.

Q So that's a much bigger area than what is depicted by this particular map, isn't it?

A Well, there would be numerous cell sites within REPOLL 208.

Q The most specific, narrow identification you have here for the coverage of this tower is what number?

A The 293.

Q Where is the information that describes the sectors for this antenna?

A It's the first digit before the 293.

Q And what is that?

A The box on the left I believe is a one. The box on the right is a two.

Q Do you have that? Maybe it doesn't come through clearly on the projector here. Do you have that in front of you?

[96]

A Yes.

Q Could you point that out exactly where those numbers are?

A Sure. It's 208, one; 293, 208, two -- or excuse me, three, 293.

Q Okay. Now then, tell us please what is the orientation of those antennas and which way do the sectors face that you have plotted out there?

A I didn't include the antenna orientation.

Q Is that information shown?

A No.

Q Did you obtain it from Sprint?

A I'm sure it's in the tower list.

Q I'm sorry?

A I'm sure it's in the tower list.

Q Would that have been included -- was it included for the other maps with the call information that you placed at the top of the pages?

A It was.

Q Is there some reason you left it off here?

A Because I was satisfied that the fact that it was in Warren, Ohio in proximity to the RadioShack was sufficient.

Q So that your purpose in doing this one was only to show that this was in Warren, Ohio, right?

A Correct.

Q And that's all you have shown here?

[97]

A Yes.

Q And your opinion only establishes that these phone calls were in Warren, Ohio, right?

A In close proximity to the robbery location.

Q Well, just to be specific for the record, at the present time you don't know whether that's north, south, east or west of this road down here that the tower is adjacent to; is that right?

A Well, based on?

Q Based upon your analysis of the records, you can't tell.

A Well, I can tell you based upon the map that sector one would be to the north.

Q And you don't know how big that sector is at all, right?

A No.

Q Now finally, I would like to direct your attention to the date of April 5, 2011, okay?

First of all, I'll ask you a question about geography in that phone usage. The location of

Hamtramck -- how long have you lived in Michigan?

A I can cut you off here. Hamtramck is due east. I misspoke earlier.

Q And it's south of the Davison Expressway; isn't it, primarily?

A Yes.

Q So if the phone calls that you have analyzed here showed [98] movement from the tower that's down in the lower part that I'm pointing to at the bottom of the page, up to the direction of the tower that is north of the Davison Expressway and east of I-75, that's not going toward Hamtramck, is it?

A Right. Now that I'm oriented, no, it's not.

Q In this case which you have shown is that a call -- the time of the robbery up there is 2:40; is that right?

A Yes.

Q By the way, with each of these maps, where did you get the time for the robbery?

A That's based on the police report.

Q Is it generally your understanding from your experience in doing this kind of work, that's not an exact, precise time either, is it?

A I'm not sure how it wouldn't be the precise time.

Q The time that the police would have, is it at the time it's reported, the time it occurred or what?

A It's not going to be the time that it occurred, because that would suggest that somebody was

standing right there and dialed 911 as the robbery is happening.

Q So it could?

A But at the time of the call being entered into the dispatch system, there could be an offset of from the time of the actual occurrence of the robbery to the time that it's [99] entered in the system.

Q So it's generally your view that at the time the robberies that are used for these maps are the times that are recorded in police reports for when they were reported; is that right?

A It's what's generated on the police report. I don't know the practice of the individual agencies.

Q In this case, the first call that you have plotted out here is at 14:21 and 43 seconds. Is that right?

A Yes.

Q And it has a duration of how long?

A Fifteen minutes and 23 seconds.

Q So that would take it from almost 14:22 to almost 14:38?

A I'm sorry?

Q It would take it from -- 14 is two, 2:21 and 43 seconds, p.m., right?

A Yes.

Q It would take it to its ending time at almost 2:38 p.m., right?

A Right.

Q Now, the second call is one that shows it incoming?

A Yes.

Q And this one is a call waiting, right.

A Yes.

Q You put a call waiting call on this one, didn't you?

[100]

A Yes.

Q So in this case, you found it to be important enough for you to put down on your map?

A Because it was immediately prior to the robbery report time.

Q And how long does this one last?

A Eighteen seconds.

Q The tower location goes from starting with 502 to 170, right?

A Yes.

Q And where are those towers located on your map?

A The 502 is the tower at the lower portion of the map and 170 is the one that's about dead center on the map.

Q Does someone need to answer an incoming call while they're on the phone in order for it to be registered as call waiting?

A That shows that it was answered.

Q Okay. Was it your testimony before in connection with identifying Hamtramck that there in this case was some indication of movement during this call?

A Yes. At some point, yes.

Q And what do you mean by that? What would be the direction of the movement?

A Well, exact direction of movement, I can't say. At the time of the termination of the call it was on tower 170 in [101] the middle of the map. How they got to 170 from 502, I don't want to --

Q This is 170, you said middle of the map. It's up in the right-hand quadrant of the map, right?

A Yes.

Q And again, this wider depiction of the road here is the Davison Expressway?

A Yes.

Q So it's a limited access road; isn't that true?

A Yes. There's entrance and exit ramps.

Q The direction then -- these two lines up here on the top, are those put there by you to indicate the direction of this particular service area or sector that you determined that the call was within?

A Yes. To illustrate the orientation.

Q So that on the first call, it was within this pie-shaped area designated by these two lines down here and up there.

It's within those two, right?

A Yes.

Q And it's clear then, according to your analysis that that phone in whatever way moved from within that small sector in the lower part, up to the one at the top, right?

A Fifteen minutes later, yes.

Q And that the time again for that movement was from 14:21 until about 2:31, right? Is that -- that's not right because [102] that call waiting call happened during the first call?

A Yes.

Q So the second call ended at what time?

A The second call ended at 14:30:28, 18-second duration.

THE COURT: Mr. Gurewitz, could we take about a five-minute break right now?

MR. GUREWITZ: Sure. I'm almost done, but this is fine.

THE COURT: Okay. Members of the jury, I guess at least one of you needs a little recess, so we're going to have you go back to the jury room for about five minutes and then we'll bring you right back out, okay?

COURT CLERK: All rise.

(Jury out and Court in recess at 11:50 a.m.)

(Court in session at 11:58 a.m.)

THE COURT: Okay, back on. We've had a discussion regarding the jury instructions. I think everyone is in agreement as to the jury instructions, the

jury instructions that will be given to the jury, except there's two issues.

There's the venue jury instruction, as well as what jury instruction will be given under aiding and abetting the gun charge; is that correct?

MR. CHADWELL: Yes, Your Honor.

MR. EARLY: Yes, Your Honor.

MR. GUREWITZ: Yes, Your Honor.

* * * * *

[105]

THE COURT: Mr. Gurewitz, you may continue when you're ready.

MR. GUREWITZ: Thank you.

THE COURT: Counsel, just be a little bit careful when you're having stuff put up on the screen, so that you're not standing in front of the screen.

MR. GUREWITZ: I'm sorry.

THE COURT: I'm not saying you, just in general. Just be careful you're not blocking the projector.

MR. GUREWITZ: I apologize.

THE COURT: I didn't say it was you, Mr. Gurewitz.

BY MR. GUREWITZ:

Q Agent Hess, just the last topic and a couple of questions I have about this exhibit or just about the time of these calls again and where they went. They start at 2:21, right?

A Yes.

Q And they go until about 2:36, right?

A Yes.

Q Maybe 2:37.

And they move from -- I'm not going to stand in front of the screen this time -- the bottom up to top, from the bottom part by the expressway over to that red circle which is the tower on that upper right side, right?

A Yes.

Q And according to your lines up there that mark out where [106] that sector was, the call was within that top sector at about the 2:36 time, right?

A Yes, at the termination point. Yes.

Q And according to the information that you got from Agent Ruiz, this robbery happened at 2:40?

A Correct.

Q Now, you talked before that sometimes you have to take into consideration in what you do, things like alibis, I think?

A Yes.

Q Well, in this case, the information that you got to take into consideration was that a robbery took place at 2:40 p.m., as of the best time that you were able to obtain from Agent Ruiz, correct?

A Correct.

Q And that this investigation pertaining to Mr. Carpenter was about whether or not he was

acting as a lookout for the robbery that happened at 2:40 p.m; isn't that right?

A That I don't know.

Q That wasn't at all a factor in your putting together this work? You didn't know that information?

A No. I simply looked at where the location of the telephone was at the time of the call?

Q What you found was that the information showed that there was movement from the location of the bottom tower up to this [107] one that is northeast of the Davison -- north of the Davison Expressway and East of I-75 before the time that this robbery took place; isn't that right?

A No.

Q Well, the ending time of that call is at 2:36, isn't it?

A Correct.

Q And the robbery, according to this, is at 2:40?

A Correct.

Q So that the location of the phone at 2:36 was in that sector, this tower over here, 170, facing north, right?

A Yes. However, at 2:30 it was in the tower south of the robbery location.

Q At 2:30? That's ten minutes before the robbery, right?

A Yes.

Q And at four minutes before the robbery, it was north of that tower 170.

A I'm sorry, at four minutes before the robbery?

Q Three minutes before the robbery, 2:37.

A Before the report time.

Q I'm sorry?

A Before the report time.

Q Before the -- whatever that is, right?

A It could be three minutes after the robbery.

Q You don't know that, do you?

A Exactly. Neither do you.

[108]

Q But that is something that you can say exactly, is that you don't know?

A Yes.

Q All right. The last thing I want to ask you, just go back briefly to ask you maybe just one question, that April -- excuse me, March 4, 2011, you said that what you -- your source of information for the location of the Sprint towers was data that the FBI had from other cases; is that right?

A Yes.

Q It is true, isn't it, that cell tower locations vary, right? They are not always the same?

A In what way?

Q Well, sometimes you don't know when cell towers are created, right?

A Correct.

Q Do you know what the date of the data was that you looked at for this purpose from Sprint?

A I don't recall the exact date, but it would be a date going back to that time frame of 2011.

Q But you don't recall the exact date?

A No.

MR. GUREWITZ: That's all I have at this time, Your Honor.

THE COURT: All right. Mr. Early?

MR. EARLY: Thank you.

[109]

CROSS-EXAMINATION

BY MR. EARLY:

Q Good afternoon, Agent Hess.

A Good afternoon.

Q I represent Timothy Sanders.

And I want to talk to you because you have already talked about the other robberies in Detroit, those maps which don't involve my client.

So I want to talk to you about a robbery that occurred in Detroit on January 7, 2011 which my client is charged with, okay?

A Okay.

Q And as I understand it, you did not obtain any cellular phone data or what you call call data reports for January 7, 2011, did you?

A None were furnished to me, no.

Q Okay. And you were advised there was a robbery on January 7, 2011; is that correct?

A Maybe. I don't know what the robbery dates were.

Q Well, did you do this chart here that says "T-Mobile robbery January 7, 2011, no cellular phone data"?

Do you want me to come closer and give it to you?

A Yes. I don't know what you're referring to.

Q I received this, I represent to the Court, along with your maps and other things, just this sheet of paper saying [110] "no cellular phone data for 2011."

Do you remember that?

A I can't say that -- that I created that slide.

Q But you do know that there's no data?

A I can't tell you that and I agree, I don't know that I created that slide.

Q But you do know that there's no data for January 7, 2011 though, right?

A There was no data on the records that were provided to me.

Q Okay. And obviously you were told something about January 7, 2011 because you know that there's no data for that date, right?

A Yes.

Q Okay. And the thing you were told is that there was a robbery that date. "We want you to analyze that." And you said "There's no data," right?

A I can't characterize it, what was stated?

Q Now, did you ever ask Mr. Ruiz for the data for January 7, 2011?

A No, because I was asked to analyze March 4th.

Q And I'm asking you, did you ever ask Mr. Ruiz for data for January 7, 2011?

A And I answered, no.

Q Okay. So we don't know on the basis of your examination [111] where the phone number belonging to Big Tim on this chart, 579-8507, was on January 7, 2011, do we, because you've done no analysis?

A Correct.

Q Now, I just have one question or two regarding March 4, 2011, which is an Ohio robbery. Do you remember that one?

A Yes.

Q Okay.

MR. EARLY: And may I have just one moment, Your Honor?

(Pause in proceedings)

BY MR. EARLY:

Q So are you telling us you never talked to Mr. Ruiz about January the 4th -- January 7, 2011?

A I can't say that I have or I haven't. I don't recall.

Q You don't recall?

A No.

Q Is there anything that would refresh your recollection as to whether or not you discussed January 7, 2011 with Mr. Ruiz?

A I can't say that there is or there isn't.

Q Now, in your report, you have on page -- you have the report up there in front of you, don't you?

A Yes.

Q On page two of your report, you say the purpose of the [112] analysis; is that correct?

A Correct.

Q And you say Special Agent Ruiz requested cell site analysis of the target phones to determine the geographic area where the target phones were located in relation to incident dates and times; is that correct?

A Yes.

Q And you're saying you don't remember anything that he supplied you about January 7, 2011?

A That's what I'm saying, yes.

Q And did you look at the call detail reports for telephone number 8507?

A Yes.

Q And isn't it a fact that the call detail reports for 8507 start at January 17, 2011?

A I would have to look at the actual records.

Q Here they are. Take a look.

A Can you point me to the page that it's on?

Q It starts at page one. That should be the one that --

MR. CHADWELL: Your Honor, I think this is inappropriate. Here he's handed the witness a stack of about a foot of paper.

MR. EARLY: I'll show him, Your Honor.

MR. CHADWELL: The witness has already clearly said he had nothing to provide on that date. And so I think from [113] here on out, he's just harassing the witness.

BY MR. EARLY:

Q I'd ask you to look at the first page here. What's the top sheet?

THE COURT: Wait, just -- what's the question?

BY MR. EARLY:

Q Okay. Are these the call details, Officer, for 8507; do they look familiar to you?

A Yes.

Q And what is the first date here that is reported to you on the call detail records?

A January 17, 2011.

Q Do you see January 7, 2011 on there, sir?

A No.

Q Thank you. And did you ever bother to ask Ruiz for January 7, 2011?

MR. CHADWELL: Asked and answered, Your Honor.

THE COURT: I think he said he didn't recall.

BY MR. EARLY:

Q You don't recall or is it a no?

A He provided me with the records that he had in his possession.

Q So did you ever ask him for January 7th?

A No.

Q Now, let's go to March 4, 2011. Now, as I understand it, [114] you're saying -- this is the analysis of -- you have it there, don't you, Mr. Hess?

A Yes.

Q You have this document, don't you?

A Yes.

Q Okay. This is March 4, 2011, 2:52. You are analyzing which you say is the report time for the robbery; is that correct?

A Correct.

Q Okay. Now at that time you're saying that the phone number of 8507 is there where that red is; is that -- that the tower location -- it's pinging off that tower where the red is? Is that you're saying, basically?

A Yes.

Q Okay. So you're saying that the phone is located over there somewhere by that tower; is that basically what you're saying?

A Yes.

Q Here they are. Take a look.

A Can you point me to the page that it's on?

Q It starts at page one. That should be the one that --

MR. CHADWELL: Your Honor, I think this is inappropriate. Here he's handed the witness a stack of about a foot of paper.

MR. EARLY: I'll show him, Your Honor.

MR. CHADWELL: The witness has already clearly said he had nothing to provide on that date. And so I think from [113] here on out, he's just harassing the witness.

BY MR. EARLY:

Q I'd ask you to look at the first page here. What's the top sheet?

THE COURT: Wait, just -- what's the question?

BY MR. EARLY:

Q Okay. Are these the call details, Officer, for 8507; do they look familiar to you?

A Yes.

Q And what is the first date here that is reported to you on the call detail records?

A January 17, 2011.

Q Do you see January 7, 2011 on there, sir?

A No.

Q Thank you. And did you ever bother to ask Ruiz for January 7, 2011?

MR. CHADWELL: Asked and answered, Your Honor.

THE COURT: I think he said he didn't recall.

BY MR. EARLY:

Q You don't recall or is it a no?

A He provided me with the records that he had in his possession.

Q So did you ever ask him for January 7th?

A No.

Q Now, let's go to March 4, 2011. Now, as I understand it, [114] you're saying -- this is the analysis of -- you have it there, don't you, Mr. Hess?

A Yes.

Q You have this document, don't you?

A Yes.

Q Okay. This is March 4, 2011, 2:52. You are analyzing which you say is the report time for the robbery; is that correct?

A Correct.

Q Okay. Now at that time you're saying that the phone number of 8507 is there where that red is; is that -- that the tower location -- it's pinging off that tower where the red is? Is that you're saying, basically?

A Yes.

Q Okay. So you're saying that the phone is located over there somewhere by that tower; is that basically what you're saying?

A Yes.

Q And is there a radius area for where that phone is located over there by that tower?

A It's oriented to the southwest.

Q Toward the Solar Street over there?

A I can't see the street names.

Q Well, would you look? You have it in front of you there. Isn't this Solar Street that it's oriented toward? And isn't [115] that some other street, northwest, right there that it's oriented towards, that area and Southern Boulevard; isn't that where it's oriented toward?

A Yes.

Q Okay. And did you map that? Did you obtain maps for this particular area?

A That is a map.

Q Okay. You were able to get the basic information to map it, what you call mapping?

A Yes.

Q Okay. And based on that, you concluded that 8507 was right basically in that area where that red dot is, right?

A Yes.

Q Okay. And that's at 2:52 p.m., right?

A The --

Q Well, it says at the top "2:52," right?

A That's the report of the robbery.

Q Pardon me? I'm just saying at 2:52 is where he's supposed to be there, around that red dot, right, where the phone is, right?

A The call at 2:20 puts him on that tower.

Q But the call is 31 minutes, so it goes up to about 2:52, doesn't it?

A Yes.

Q So you're saying he's over there by that red dot at about [116] 2:52, right?

A I'm saying he --

Q The phone is, the phone is, at least?

A Can I answer?

Q Yes.

A I'm saying he utilized that tower for that call.

Q You're saying whoever used that phone utilized that tower, right?

A Yes.

Q Okay. And looking at another one of your maps here for March 4th at 2:52, and this is for the phone number 6845, which has been attributed to Mr. Carpenter; do you see that one?

A Yes.

Q Okay. And this is the map for him, for his phone for 2:52; is that correct?

A Yes.

Q For his alleged phone. And you're saying that he -- that phone was down there by Market Street?

A It used the tower down by Market Street.

Q Okay. That is the tower down at Market Street.

So that means that's a different tower than the other tower you were referring to on the other map, isn't it?

A Entirely different company.

Q Okay, it's a different tower; is that correct?

[117]

A Entirely different company.

Q And the top -- so the answer to my question is, "Yes, it is a different tower, because it's a different company;" isn't that correct?

A Yes.

Q And that tower location is different than the location on the other map, isn't it?

A Yes.

Q And does that indicate that the user of that phone was in a different location?

A No.

Q Why not?

A It's two different companies.

Q But there's two different tower locations?

A Yes. So T-Mobile has a tower in one location and Sprint has a tower in another location.

Q Do the tower locations overlap or do you know?

A It's two different companies, two different technologies, so they would not overlap. They don't communicate with one another.

Q They do not communicate with one another?

A No.

Q So in that regard there is the possibility, based on these two maps, that the person using each of those two phones were in different locations at 2:52?

[118]

A It's apples and oranges.

Q What you mean by that?

A You're talking about one phone that's using the Sprint network, another phone using the T-Mobile network.

Q So you can't really say on the basis of the phone technology if they were or were not in different locations?

A No, I can't. I can only tell you what orientation for each company.

MR. EARLY: Okay, nothing further.

THE COURT: Redirect?

MR. CHADWELL: Can we have Exhibit 57? Put December 13th up. You know what, I can just use that.

REDIRECT EXAMINATION

BY MR. CHADWELL:

Q Agent, can you see your report up there?

A Yes.

Q And I will also be talking about this a little bit, too.

So December 13, 2010, the two towers we are talking about are 127; is that correct?

A Yes.

Q And 145?

A Yes.

Q And 145 being a little closer to the RadioShack than 127, but maybe not by much?

A Right.

[119]

Q And then, just so it's clear to the jury in case the jury can't see, this is tower 145, right?

A Yes.

Q The RadioShack?

A Yes.

Q Now, Agent, can you see -- can you see Defendant's Exhibit 3 there?

A Yes.

Q And do you see up where it says "145"?

A Yes.

Q And do you see the rest of the day?

You see 1:45 up here, in the morning, right?

A Right.

Q Around the time of the robbery?

A Yes.

Q 10:31? So 10:31 we are looking at tower 145, right?

A Right.

Q And then we've got all kinds of other times throughout the day. It's hard to see all this at once, but we've got 11:00, 12:00. We've got 1:00 in the afternoon. All military time here?

A Yes.

Q We've got all the way to 3:24 p.m. on this document, right?

A Correct.

[120]

Q And so the only time that phone is on tower 145 is right around the time of the robbery?

A Correct.

Q According to defendant's own exhibit?

A Correct.

Q Now, we want to talk about the April 5th one for just a second here. I think it was my mistake before when I was pointing up towards Hamtramck. But we can see Hamtramck on this map, can't we?

A Yes.

Q So Hamtramck is kind of at the bottom of the map there.

And then you were asked about some times, too. Let's just make sure the times are clear, in terms of the calls first of all.

Mr. Gurewitz was saying like to 2:30, 2:36. But if we really add up the times, we're talking

about 2:37, aren't we, if we add up 14:21 43 seconds, we get -- plus 15 minutes, 23?

A Yes.

Q That gets us to 2:37, right?

A Yes.

Q And if we assume that the police were not called until 2:40, that's a three-minute difference?

A Yes.

Q Okay. And we don't know all the circumstances of how the [121] police were called. We don't know if people were on the floor, if they had to find their phone or whatever else could have transpired in those three minutes.

But here's what we do know, and correct me if I'm wrong, Agent, that phone was in this sector starting, and it headed into this direction, right?

A Yes.

Q And this is about how far away?

A I believe it is -- the distance between the towers was three-quarters of a mile or so.

Q Okay. So hypothetically, we don't know what direction someone is traveling exactly, but they could have gone up this road and got on McNichols. And by the end of the call, it could have been right here on McNichols, according to the chart; is that right?

A Yes.

Q And if they are heading down McNichols, pretty soon they would be in a position to take a -- first of all they're already on the other side of 75. And

just for the record, they're now on the same side of 75 as Hamtramck, are they not, --

A Right.

Q -- in my hypothetical here?

A Yes.

Q So they might be heading down McNichols and they might be [122] getting ready to take a right-hand turn on Klinger or Charest or McDougall or any number of streets where they could head to Hamtramck?

A Yes, possibly.

Q According to this?

A Yes.

Q Now, they weren't heading back towards the East Jefferson area that we were just looking at, right?

A No, not based on that.

Q They weren't heading in that direction?

A Not based on that, no.

Q So they weren't heading, say, as a crows flies, to Hamtramck, but they were not heading away from Hamtramck?

A Correct.

Q According to your map maker, okay.

MR. CHADWELL: That's all I have, Your Honor.

THE COURT: Mr. Gurewitz?

RECROSS-EXAMINATION

BY MR. GUREWITZ:

Q Agent Hess, I put up on this ELMO projector the map for December 13th.

You indicated a robbery time of 10:35 a.m.; do you see that?

A Yes.

Q And I'll show you again, the Exhibit Three, which is the [123] detail page for this phone number (313) 412-6845 for December 13th, that includes this time.

Mr. Chadwell just asked you questions about the location at the beginning time, the first call that's shown there for that morning.

A Yes.

Q And that is at 10:24?

A Right.

Q And that's the one you said was a tower? What number, please?

A That was on tower 145.

Q And the next one is at 10:31 for --

A I'm sorry, excuse me. You said the 10:24 call?

Q Yes.

A Tower 127.

Q All right. And the next one is at 10:31, at which tower?

A That's on 145. They originated on 145.

Q Now, as I asked you before, following those two calls there are two additional call waiting calls?

A Yes.

Q And what times are those?

A At 10:36 and 10:37.

Q Putting those all together that indicates there is movement at least as to the towers that were used during that time period; isn't that right?

[124]

A From 10:31 to 10:37, yes.

Q In what direction, please?

A To the north, towards 94.

Q According to the duration periods that are on the call detail record, it encompasses the time period that is shown there for the robberies; isn't that right?

A The call waiting calls happen after the reported time of the robbery.

Q So that during the time period of those calls, that's when the reported time of the robbery is on your map, right?

A Yes.

Q Mr. Chadwell asked you questions about whether or not there are any other calls by that number recorded on that report on that day for those same towers; isn't that right?

A Correct.

Q But wouldn't it be relevant to your investigation to be thorough about this, to look at whether or not there was usage by that tell phone of those towers on other days, before or after this, right?

A I would disagree with that.

Q Well, wouldn't that show whether or not the person frequented the particular area that you were looking at for the specific day of December 13, 2010?

A It might.

Q And it would be relevant, wouldn't it, to a total [125] consideration of what the significance of this is to consider whether or not the person had other reasons for being in that neighborhood, right?

A It's a question that may be asked, yes.

Q Such as visiting the relatives of his children, right?

A Possibly.

Q Now, as to April 5, 2011, you were asked questions by Mr. Chadwell just a couple of minutes ago about whether certain routes were possible ways to get to Hamtramck by going north while Hamtramck is south.

Was it part of your investigation to put together this map to take those things into consideration?

A No. Escape routes were not a consideration for me.

Q In fact, you don't even know at the present time whether or not any of -- going north on Woodward, for example, which is about a mile north of the Davison Expressway to McNichols and then traveling over McNichols past all the stores and shops that are along there and the stoplights, was a route that's even feasible as a

way to get directly to Hamtramck that's down here in the lower right-hand corner, right?

A It's certainly feasible.

Q I suppose one could walk there, too. That's feasible as well, right?

A Sure.

MR. GUREWITZ: That's all I have, Your Honor.

* * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No.
12-20218

TIMOTHY IVORY CARPENTER and
TIMOTHY MICHAEL SANDERS,

Defendants.

JURY TRIAL – VOLUME EIGHT
BEFORE HON. SEAN F. COX
United States District Judge
257 U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Monday, December 16, 2013)

APPEARANCES:

KENNETH R. CHADWELL, ESQUIRE
Appearing on behalf of the
Government.

HAROLD Z. GUREWITZ, ESQUIRE
JASON EGGERT, ESQUIRE
Appearing on behalf of the
Defendant Timothy Ivory
Carpenter.

S. ALLEN EARLY, ESQUIRE
Appearing on behalf of Defendant
Timothy Michael Sanders.

* * * * *

[55] But he's got three phones and one of them is that number.

Additionally, Little Tim engages in witness tampering in this case. He decides he's going to write up a nice affidavit for Sedric Bell-Gill to sign. And the affidavit just says that Little Tim is innocent of everything. He didn't do nothing, especially with a firearm, according to Sedric Bell-Gill's affidavit that Little Tim provided.

And when you're deliberating, go back and check the date of that affidavit. It's the day before Sedric Bell-Gill is pleading guilty, so there is some urgency in getting that affidavit signed, isn't there, ladies and gentlemen. These prisoners are dumb enough to think that a jury is going to look at an affidavit saying "Little Tim is innocent," and that's it, that's all you've got to think about. These are the actions, ladies and gentlemen, of a guilty person creating false evidence to present to a jury.

I have already mentioned the videos from Ohio as corroboration of what the witnesses are saying. You know they are at Little Caesars, you know what they were doing and you know what time they were at Little Caesars. You know they were at Family Dollar, first of all, buying the bags ahead of that, just like the witnesses said.

Then there's another overlay of corroboration and that is the phone data tracking. Little Tim's phone just [56] happened to be right where the first robbery was at the exact time of the robbery, the exact sector. And that's the only time that entire day,

according to the defense exhibit, he's there. Same thing with December 18, 2010, Little Tim's phone.

March 4, 2011 -- that's kind of unnecessary, right, because they're on video. You know where they're at. But it's also a pretty good check on the phone track data that you know where they're at, but the phone track data tracked that also.

And April 5, 2011, Little Tim's phone right in the right sector before the RadioShack in Highland Park, and shortly afterwards heading not directly to Hamtramck, but in the general direction of Hamtramck. He's not going back to visit the kids back East Jefferson, right? He's heading in the general direction of exactly where our witnesses said he headed, including Hassan.

* * * * *

[63]

* * * * *

And think about that, please, when you go back and you start reviewing what the testimony was of Agent Hess, Agent Hess, the government -- the FBI expert who has this [64] special ability to analyze cell phone tower records and cell tower records, who reached this conclusion. He said it's not an exact science, but it's just his opinion, reached this conclusion that he placed a phone in a particular neighborhood at a certain time. Keep in mind as well, certainly, that all he was able to talk about is that the phone that placed that call was there. He didn't tell you and he acknowledged he can't tell you who actually was using the phone at the time the call was made.

But according to the testimony of these witnesses who lived in those neighborhoods, people who say that they have known Timothy Carpenter all his life, he had every reason in the world to be present on Jefferson Avenue in that neighborhood on December 18 -- excuse me, December 13, 2010, and on Gratiot on December 18, 2010. So that all those records really tell you is that if, in fact, he did have the phone on that day, he was where he lived and spent all of his time. And that's all it says.

* * * * *

[107]

This thing with the towers? You heard testimony from Special Agent Hess that certain phones only communicate with certain types of towers, and that's the reason for these two different maps showing different locations. If you've got a T-Mobile phone, that's only talking to a T-Mobile tower. If you have a Metro PCS phone, it only talks to a Metro PCS tower.

So these two defendants had different types of phones. You know where they were. You saw them on video. There's no question about where these guys were. But Hess's charting of them was different because one phone's talking to this tower and the other phone's talking to this tower.

Also, you saw Mr. Sanders was the only one actually on the phone right at the time of the robbery. And his particular type of phone happened to be -- happened to communicate with the tower that just happened to be closest, right at the robbery scene.

The other call is by Carpenter's phone. You didn't see him on the phone during the robbery. He was making calls before and after and he was probably away from the scene. Or if he wasn't away from the scene, that tower was the -- that type of tower which talks to his type of phone was the closest one and that's why it appears to show him a mile away, but that's really where the tower is.

* * * * *

metroPCS

Call Detail

Records for Target Number: 3134249573

DEFENDANT'S EXHIBIT

CASE NO.

EXHIBIT NO. 7

Search Number: 3134249573 Search Dates: 12/1/2010 - 5/10/2011

12/13/2010	00:04:58	0:36	Outgoing Call	3136294261	3136294261	Answered	None			Detroit1	2	117		2	117
12/13/2010	00:05:38	0:35	Outgoing Call	3136294261	3136294261	Answered	None			Detroit1	1	418		1	418
12/13/2010	00:07:28	0:35	Outgoing Call	3134126406	3134126406	Answered	None			Detroit1	1	418		1	418
12/13/2010	00:08:06	0:34	Outgoing Call	3137782032	3137782032	Answered	None			Detroit1	1	418		1	418
12/13/2010	00:11:09	0:33	Outgoing Call	3137782032	3137782032	Answered	None			Detroit1	1	418		2	117
12/13/2010	00:14:27	0:34	Outgoing Call	3137782032	3137782032	Answered	None			Detroit1	2	117		2	117
12/13/2010	00:15:14	10:32	Incoming Call		3134249573	Answered	None	3134126845	Detroit1	2	117		1	489	
12/13/2010	00:51:26	7:50	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	5	133		2	117
12/13/2010	00:39:30	0:44	Outgoing Call	4832376	3134832376	Answered	None			Detroit1	3	117		3	117
12/13/2010	00:41:51	1:34	Incoming Call		3134249573	Answered	None	3134126845	Detroit1	2	495		3	461	
12/13/2010	01:02:56	14:09	Incoming Call		3134249573	Answered	None	3132089979	Detroit1	2	117		2	489	
12/13/2010	01:08:58	0:55	Incoming Call		3134249573	Answered	Call Waiting	3134126845	Detroit1	3	117		3	117	
12/13/2010	01:30:06	1:50	Incoming Call		3134249573	Answered	None	3134126845	Detroit1	1	497		2	497	
12/13/2010	08:31:20	0:24	Incoming Call		3134249573	Answered		7344749661	Detroit1	3	111		3	111	
12/13/2010	08:50:20	9:34	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	1	418		1	418
12/13/2010	09:19:48	1:33	Incoming Call		3134249573	Answered	None	3138781501	Detroit1	1	418		1	418	
12/13/2010	09:32:59	0:27	Outgoing Call	3135754953	3135754953	Answered				Detroit1	3	117		3	117
12/13/2010	09:33:31	3:48	Outgoing Call	3136754399	3136754399	Answered	None			Detroit1	3	117		3	131
12/13/2010	09:38:23	0:42	Outgoing Call	3138781501	3138781501	Answered	None			Detroit1	3	461		3	461
12/13/2010	09:38:22	0:54	Outgoing Call	3716043	3133716043	Answered				Detroit1	3	461		3	131
12/13/2010	09:40:24	1:22	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	3	131		3	131
12/13/2010	09:45:12	0:37	Outgoing Call	3134126406	3134126406	Answered	None			Detroit1	3	461		2	131
12/13/2010	09:48:04	0:24	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	3	461		3	461
12/13/2010	09:48:39	0:02	Incoming Call	71313342495	3134249573	Answered	Call FWD - Busy	3134126406	Detroit1						
12/13/2010	09:48:33	0:33	Outgoing Call	3716043	3133716043	Answered				Detroit1	2	131		3	461
12/13/2010	09:59:49	0:05	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	3	151		3	151
12/13/2010	09:59:58	0:06	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	2	156		2	156
12/13/2010	10:00:38	0:05	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	3	151		3	151
12/13/2010	10:00:37	0:04	Incoming Call	71313342495	3134249573	Answered	Call FWD - Busy	3134126845	Detroit1						
12/13/2010	10:09:57	0:26	Incoming Call		3134249573	Answered	None	3134126845	Detroit1	3	131		3	151	
12/13/2010	10:13:17	0:17	Incoming Call		3134249573	Answered	None	3134126845	Detroit1	5	148		5	148	
12/13/2010	10:24:42	5:59	Outgoing Call	3134126845	3134126845	Answered	None			Detroit1	3	146		2	127
12/13/2010	10:31:21	8:23	Incoming Call		3134249573	Answered	None	3134126845	Detroit1	5	164		1	164	
12/13/2010	10:48:54	0:42	Incoming Call		3134249573	Answered		3135201613	Detroit1	5	401		5	401	
12/13/2010	10:50:21	0:26	Outgoing Call	5867440281	5867440281	Answered				Detroit1	5	401		5	401
12/13/2010	10:53:23	0:36	Outgoing Call	2487220120	2487220120	Answered				Detroit1	1	445		1	445
12/13/2010	10:54:49	1:22	Outgoing Call	3135201613	3135201613	Answered				Detroit1	3	164		5	164
12/13/2010	10:56:22	0:32	Outgoing Call	5867440231	5867440281	Answered				Detroit1	5	164		5	164
12/13/2010	11:05:21	0:31	Outgoing Call	7344442530	7344442530	Answered	Outside Home Switch			Detroit2					
12/13/2010	11:05:26	0:27	Incoming Call		3134249573	Answered	Outside Home Switch	2487220120	Detroit1	1	146		1	146	
12/13/2010	11:06:58	0:37	Outgoing Call	3137282481	3137282481	Answered	None			Detroit1	1	146		1	146

metroPCS

DEFENDANT'S EXHIBIT
CASE NO.
EXHIBIT NO. 3

Records for Target Number: 3134126845

Search Number: 3134126845 Search Dates: 12/1/2010 - 3/10/2011

12/13/2010	10:24:47	3:56	Incoming Call		3134126845	Answered	None	3134249573	Detroit1	1	127		2	127
12/13/2010	10:31:18	5:25	Outgoing Call	3134249573	3134249573	Answered	None		Detroit1	3	145		1	164
12/13/2010	10:36:06	0:31	Incoming Call		3134126845	Answered	Call Waiting	3139788284	Detroit1	5	469		3	164
12/13/2010	10:37:21	0:26	Incoming Call		3134126845	Answered	Call Waiting	3139482796	Detroit1	3	164		3	164
12/13/2010	10:42:44	0:50	Incoming Call		3134126845	Answered	None	3139482796	Detroit1	3	164		3	164
12/13/2010	10:52:13	0:09	Incoming Call	7113134126845	3134126845	Answered	Call FWD - No Reply	7015098596	Detroit1	1	445		1	445
12/13/2010	11:31:48	1:19	Incoming Call		3134126845	Answered	None	3137421449	Detroit1	1	418		1	418
12/13/2010	11:45:19	0:36	Incoming Call		3134126845	Answered		5862481054	Detroit1	2	117		2	117
12/13/2010	12:37:33	25:38	Incoming Call		3134126845	Answered	None	3139788284	Detroit1	3	538		1	536
12/13/2010	12:38:27	0:48	Incoming Call		3134126845	Answered	Call Waiting	3134249573	Detroit1	1	538		3	536
12/13/2010	12:44:04	0:00	Outgoing Call	7113134126845	3134126845	Answered	Call Waiting		Detroit1	3	538		3	538
12/13/2010	12:45:25	0:05	Outgoing Call	7113134126845	3134126845	Answered	Call Waiting		Detroit1	3	538		3	538
12/13/2010	13:03:26	5:07	Outgoing Call	3137421449	3137421449	Answered	None		Detroit1	3	538		3	538
12/13/2010	13:04:56	0:24	Incoming Call		3134126845	Answered	Call Waiting	3134249573	Detroit1	3	538		3	538
12/13/2010	13:06:31	1:19	Incoming Call		3134126845	Answered	Call Waiting	5862481054	Detroit1	1	538		3	538
12/13/2010	13:13:42	0:17	Incoming Call		3134126845	Answered	None	3134249573	Detroit1	3	538		3	538
12/13/2010	13:20:15	0:04	Incoming Call	7113134126845	3134126845	Answered	Call FWD - No Reply	3139326811	Detroit2					
12/13/2010	13:20:27	0:46	Outgoing Call	3139326811	3139326811	Answered			Detroit1	6	259		1	259
12/13/2010	13:24:20	9:43	Outgoing Call	7344442427	7344442427	Answered	Outside Home Switch		Detroit2					
12/13/2010	13:24:28	1:39	Incoming Call		3134126845	Answered	Outside Home Switch	3139326811	Detroit1	6	192		6	197
12/13/2010	14:00:35	0:31	Outgoing Call	5862481054	5862481054	Answered			Detroit1	2	401		4	401
12/13/2010	14:00:49	0:57	Outgoing Call	5862481054	5862481054	Answered			Detroit1	2	401		5	401
12/13/2010	14:13:29	2:36	Outgoing Call	3137427201	3137427201	Answered	None		Detroit1	2	382		2	382
12/13/2010	14:15:18	4:26	Outgoing Call	3137783320	3137783320	Answered	None		Detroit1	5	382		3	217
12/13/2010	14:34:10	0:50	Incoming Call		3134126845	Answered	None	3134249573	Detroit1	2	261		1	214
12/13/2010	14:35:15	0:16	Incoming Call		3134126845	Answered	Call Waiting	3137427201	Detroit1	2	261		2	261
12/13/2010	14:56:15	1:14	Outgoing Call	7344442154	7344442154	Answered	Outside Home Switch		Detroit2					
12/13/2010	14:56:29	1:04	Incoming Call		3134126845	Answered	Outside Home Switch	3139326811	Detroit1	3	465		3	465
12/13/2010	15:10:17	0:57	Incoming Call	7113134126845	3134126845	Answered	Call FWD - No Reply	8535135240	Detroit1	3	465		3	465
12/13/2010	15:10:43	0:35	Outgoing Call	3137531168	3137531168	Answered	None		Detroit1	3	465		1	465
12/13/2010	15:15:36	0:42	Outgoing Call	3137531168	3137531168	Answered	None		Detroit1	2	465		2	465
12/13/2010	15:16:23	2:25	Outgoing Call	3134126845	3134126845	Answered	None		Detroit1	2	465		2	465
12/13/2010	15:16:25	0:24	Incoming Call	7113134126845	3134126845	Answered	Call FWD - Busy	3134126845	Detroit1					
12/13/2010	15:17:02	10:58	Outgoing Call	3137531168	3137531168	Answered	None		Detroit1	2	465		2	465
12/13/2010	15:17:15	0:04	Incoming Call	7113134126845	3134126845	Answered	Call FWD - Busy	3139326811	Detroit2					
12/13/2010	15:17:46	0:53	Outgoing Call	7344442454	7344442454	Answered	Outside Home Switch		Detroit2					
12/13/2010	15:17:51	0:50	Incoming Call		3134126845	Answered	Outside Home Switch	3139326811	Detroit1	2	466		2	465
12/13/2010	15:18:46	1:01	Outgoing Call	3137531168	3137531168	Answered	None		Detroit1	2	465		1	186
12/13/2010	15:21:23	0:59	Outgoing Call	7344442357	7344442357	Answered	Outside Home Switch		Detroit2					
12/13/2010	15:21:26	0:57	Incoming Call		3134126845	Answered	Outside Home Switch	3139326811	Detroit1	3	465		3	465
12/13/2010	15:24:39	13:28	Outgoing Call	5862481054	5862481054	Answered			Detroit1	1	188		2	465